



Appeal Decision

Hearing Held on 15 January 2020

Site visits made on 14 and 15 January 2020

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/U1105/W/19/3233226

Land to the West of Coly Road, Colyford

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Colyford Eden Ltd against East Devon District Council.
 - The application Ref 18/2376/MFUL, is dated 10 October 2018.
 - The development proposed is residential development, 15 no dwellings (10 no affordable), with site access and associated works.
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Decision

1. The appeal is dismissed and planning permission for residential development, 15 no dwellings (10 no affordable), with site access and associated works is refused.

Preliminary Matters

2. The application was submitted against the failure of the Council to determine the application within the prescribed period. The Council confirmed that, had it been in a position to determine the application, it would have refused it for five reasons relating to: the effect of the proposal on the character and appearance of the area, with particular regard to the landscape setting and need to maintain the separate identities of Colyford and Colyton; the design and layout; the effect of the proposal on protected species, namely bats; and two reasons for refusal (RfRs) relating to the absence of a S106 Planning Obligation to secure affordable housing, public open space and a drainage scheme.
3. A signed Planning Obligation by Agreement made under Section 106 of the above Act (the S106 Agreement) was submitted at the Hearing. The Council agreed that this adequately addressed the matters of affordable housing and public open space and thus, would address the third putative RfRs and also part of the second.
4. The Hearing was closed in writing on 24 January 2020, following the receipt of a supplemental unilateral undertaking (UU), also made under Section 106 of the Act. The UU covered the matter of private drainage infrastructure and it was agreed that this would adequately address the fifth putative RfR.

Main Issues

5. The main issues are:

- The effect of the proposal on the character and appearance of the area, with particular regard to the landscape setting and desirability of maintaining the separation between Colyford and Colyton;
- The adequacy of the design and layout of the proposal; and
- The effect of the proposal on protected species, with particular regard to bats.

Reasons

Character and appearance

6. The site lies immediately adjacent to Kingsholme, a housing estate on the north eastern edge of Colyford. Colyford is a village without a Built Up Area Boundary (BUAB) as defined by the East Devon Local Plan¹ (Local Plan). The site therefore forms part of the open countryside.
7. The appeal proposal is promoted as a cross-subsidy housing scheme comprising 66% affordable housing (10 dwellings) and 33% market housing (5 dwellings). Such schemes are supportable in principal under Local Plan Strategy 35 in areas of open countryside which are physically well related to villages without a BUAB. The parties agree that the principal of development accords with Strategy 35 in respect of the site's physical relationship to Colyford and that sufficient affordable housing need exists in the parish.
8. The appeal site forms part of the designated Green Wedge under Strategy 8 of the Local Plan and the accompanying Proposals Maps. Strategy 8 sets out that development will not be permitted within Green Wedges where it would add to existing sporadic or isolated development, damage the individual identity of a settlement, or could lead to, or encourage settlement coalescence. The key settlements in this case are Colyford and the separate village of Colyton. The appeal site forms a relatively small component of the south-eastern extremity of the Green Wedge that separates the two villages.
9. A small cluster of dwellings lies to the north of Colyford, separated by the length of the site's western boundary. Nos 1 and 2 Kingsholme Cottages form part of this cluster along with Ruffold House and Shells Cottage and all are located close to Shells Lane. There are a few other dwellings sited further north-west which are on higher ground and not sited in such close proximity to the road, meaning that they form a straggle of development which is not easily interpreted as part of the same cluster.
10. It was argued by the appellant that the cluster of dwellings at Shells Lane are experienced as part of Colyford and that the infilling of the gap between them would not lead to development being any closer to Colyton. The appellant's Landscape and Visual Impact Assessment (LVIA) and supplemental letter from the appellant's landscape consultants, AECOM, emphasise that the landscape character would not be harmed owing to the retention of the key landscape components of the area, including hedgerows and mature trees. The visual impacts are described in the LVIA as limited with only four viewpoints in close

¹ East Devon Local Plan 2013 – 2031 (adopted January 2016)

proximity considered to be affected beyond completion of the development and establishment of the landscape (year 15).

11. During my site visits I experienced a difference in the character of the Green Wedge when passing between the two settlements along Coly Road. Irrespective of the elements of urbanisation along Coly Road, including domestic boundary treatments, street lighting and highway signage, the appeal site forms an obvious undeveloped gap in the settlement form experienced before passing the cluster of houses at Shells Lane. This area can be characterised as semi-rural.
12. Once past the cluster of dwellings, the road becomes narrower and the trees and landform tightly enclose the road. There are very few urban influences along this stretch of road and it feels more characteristically rural.
13. The proposal would bridge the gap between the edge of Colyford and the detached cluster of dwellings around Shells Lane. Introducing the dwellings and the highway access at this point, albeit with extensive landscaping measures, would harmfully urbanise the eastern side of Coly Road and would undermine the relief in the built form provided by this small section of the Green Wedge. It would result in the change in character from settlement edge to rural landscape becoming more abrupt and occurring after the cluster of dwellings in Shells Lane, reducing the perception of distance between Colyford and Colyton.
14. Within the appeal site itself, there is a degree of urban influence from the close proximity of dwellings and the domesticated style of boundary treatments, particularly along the site's southern boundary. This type of relationship is not uncharacteristic of other areas along the edge of the Colyford side of the Green Wedge. Similarly, whilst the western and north-western hedges of the site have been extensively flailed, they are alike most hedgerows between the network of fields that form the Green Wedge and views are attainable over them to the surrounding agricultural landscape. Neither factor detracts from the purpose or quality of the Green Wedge.
15. In views from Shells Lane and Footpath 34, the appeal site forms a modest mid-ground element with the Kingsholme Estate and its mature trees forming the main backdrop. From certain points on this walking route, Colyton is viewed entirely separately from Colyford in the opposite direction with a turn of the head. Whilst the distance and landform between the two settlements are more clearly apparent in these views, the proposed two storey dwellings would noticeably occupy a gap between Kingsholme and Kingsholme Cottages, thus adding to the sporadic development and drawing the settlement edge of Colyford closer to Colyton.
16. Though there would only be a limited number of other vantage points from which the proposal and its effect on the Green Wedge would be discernible, the effects would be substantial in these views. The proposal represents more than a technical loss of Green Wedge and would instead, detract from its extent, its function and the degree of openness it contributes to the settlement edge of Colyford.
17. Consequently, the proposal would represent development in the Green Wedge that would add to the existing sporadic development at Shells Lane. Whilst it would not result in Colyford merging entirely with Colyton or touching it at any given point, the much reduced distance between them would be a step towards

their coalescence, with resultant harm to the identity of Colyford. As such, the proposal is contrary to Local Plan Strategy 8.

Design and layout

18. The layout of the scheme would involve dwellings facing onto a dead-end estate road with a turning head. Around the outside of the curtilages of the dwellings would be a meandering pathway within a landscaped buffer strip. Notwithstanding that the buffer strip may be intended to serve a separate ecological function, combined with the deliberately engineered and functional highway design and rigid positions of the rear garden boundaries, the layout would appear irregular and contrived, and would also fail to minimise opportunities for crime and anti-social behaviour.
19. Whilst the scheme would generally provide sufficiently well-proportioned garden spaces, the garden for the affordable dwelling closest to the point of access would be substantially compromised due to its siting and the intended position of its boundaries. The modest area of Public Open Space would also be sited so as to be largely obscured from public view behind a Devon hedgebank, thus undermining natural surveillance opportunities and undermining its potential role as an area for social interaction and outdoor play.
20. I note the disparity between the scale of the market houses compared with those designed to meet the affordable housing needs which are generally for dwellings of 2 to 3 bedrooms. Given that there is a maximum number of dwellings that can be built under Local Plan Strategy 35 which may inhibit the delivery of a wider mix of dwellings, the design and size differentiation of the respective tenures of dwellings would appear acceptable.
21. The Colyford Conservation Area Appraisal (1999) notes that the neighbouring Kingsholme estate is a detracting feature of the Colyford Conservation Area (CA) and that red brick is not a particularly common building material throughout the CA. The appeal site adjoins but does not form part of the CA. It would however, bear most resemblance to the Kingsholme estate than to any other properties in the area. Whilst the design of the individual dwellings would not be particularly innovative or locally distinctive, or conversely, harmful, the predominance of red brick for external walling would feel oppressive and does not appear to draw from the greater mix of building materials found elsewhere in the village and CA.
22. Considered in the round, the design and layout of the scheme and its effect on the character and appearance of the area would fall short of the requirements of, in particular, Local Plan Policy D1 and Strategy 35. These policies seek to ensure that development will be of a high quality design and locally distinctive, incorporating, amongst other things, secure and attractive layouts and appropriate local materials.

Protected Species

23. An Ecological Impact Assessment and subsequent Bat Addendum Report was submitted with the appeal application. It is agreed between the parties that bats use the site and that the area is particularly important for the Long-Eared species of bat given the known existence of a rare maternity roost within approximately 350 metres west of the site.

24. It was conceded at the hearing that the amount of bat surveys undertaken between late May and October 2017 fell short of the suggested number of surveys required to accord with best practice² for a site of at least moderate suitability for bats. It was acknowledged that for reasons owing to the timing of the submission of the appeal application and responses from ecologists in relation thereto, that the Spring survey windows were missed again in both 2018 and 2019. It was also explained that problems were encountered with remote devices employed to detect bats on site which underlies some of the anomalies with the presented data for 2017.
25. It was suggested that some hedge boundaries around the site are currently of poor quality and that there are other existing local features, including street lighting, that may detract from the suitability of the area for bats. The appellant also highlights that even without the full suite of Spring survey data and some shortcomings in the collected data during the Summer to Autumn period of 2017, the design of the proposal has taken account of the usage of the site by bats and would ensure that key components, including trees and the linear hedgerows, are retained and improved to protect known foraging routes. It is suggested that planning conditions could secure Landscape and Ecological Management Plans (LEMPs) (for the construction and operational phases) and a lighting strategy to supplement the scheme's sensitive design and layout in order to fully mitigate the effects of the proposal on bats and secure wider ecological enhancements.
26. However, given the acknowledged sensitivity of the area for this protected species and the recognised shortcomings with the survey data, it has not been adequately demonstrated to me that the proposal is configured on the basis of a comprehensive understanding of the importance of the site for bats. Taking a precautionary approach, I am not satisfied that the mitigation measures, along with those that may be capable of being secured by conditions, would ensure the adequate protection of the species.
27. In the circumstances, the proposal would harm the biodiversity value of the area and a protected species, contrary to Local Plan Policy EN5 and Strategy 47 which together, amongst other things, seek to conserve the biodiversity value of land and minimise fragmentation of habitats.

Other Matters

28. Whilst the proposal is within the Impact Risk Zone of the River Axe Special Area of Conservation (SAC), it is common ground between the parties that the proposal would not result in significant effects on the integrity of the SAC. The Council's Delegated Report sets out that this position was agreed in correspondence from Natural England in relation to the appeal application. Whilst I have limited evidence in this regard, as the circumstances that could have led to the granting of planning permission are not present, it is not necessary for me to consider the necessity of an Appropriate Assessment³.
29. A suite of planning conditions was discussed at the Hearing which might be attached to a planning permission if the appeal were to be allowed. Whereas all the conditions – adapted or revised as appropriate – can be seen to be

² Bat Conservation Trust – Bat Surveys for Professional Ecologists: Good Practice Guidelines 3rd Edition

³ Under The Conservation of Habitats and Species Regulations 2017

reasonable and necessary, they would not overcome the harms which I have identified. That is, the suggested conditions would not make an otherwise unacceptable development acceptable.

30. The S106 Agreement and supplemental UU would secure the delivery of the affordable housing, public open space and drainage infrastructure, and any ongoing obligations in relation to the occupancy and/or management thereof. I accept that the planning obligations would meet the three tests set out in paragraph 56 of the National Planning Policy Framework ('the Framework') in that they are necessary to make the development acceptable in planning terms, are directly related to the development and also fairly and reasonably related in scale and kind. Nevertheless, the matters included do not overcome the harms that I have identified would be caused by the proposed scheme.

Planning balance and conclusion

31. The proposal would deliver benefits in the form of additional houses to the housing stock. There would also be economic gains both during the construction phase and throughout the occupation of the houses by new residents to the village. The affordable housing provision of 10 dwellings would be the most notable benefit of the scheme, enabling a number of families to access housing within their financial means with resultant social benefits. Accordingly, I give moderate weight to these benefits.
32. However, there is no particular pressing housing land shortage or acute affordable housing need that may otherwise add any further weight to the benefits of the scheme. The benefits do not amount to considerations of sufficient materiality to set aside the identified harms and associated conflict with the Development Plan. There are no other considerations, including the Framework, that indicate that a decision should be taken other than in accordance with the Development Plan.
33. Consequently, in view of the above and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Drake	Eden Land Planning Ltd
Mr Adam King	Aecom
Ms Stephanie Attwood	The Landmark Practice

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jeremy Ebdon	East Devon District Council
Mr Julian Perrett	Encompass Ecology

INTERESTED PERSONS:

Mr Paul Arnott	Minton House
Mr Keith Mills	10 Thomas Bassett Drive
Mrs Sue Lowe	2 Kingsholme Cottage
Mr Brian Lowe	2 Kingsholme Cottage
Mr James Cady	1 Kingsholme Cottage
Mr Brian Nason	5 The Elms
Ms Diana Nason	5 The Elms
Ms Sara Blunt	Ruffold House
Mr Howard West	Letaba, 2 Sellars Close
Mr Edmund Jones	Dares Farmhouse
Mr Robert Kenyon	10 Old Manor Gardens
Mr Peter Mason	23 Kingsholme
Mr Ian Priestly	Woodpeckers
Mr Charles Harmer	21 Kingsholme
Mr John Swithinbank	Hollyridge
Mr Eric Swithinbank	Hollyridge
Mr Gary Gleton	10 Old Manor Gardens
Mr James Carthy	Olive Tree House, Beer

DOCUMENTS SUBMITTED

Document 1	Draft Affordable Housing Supplementary Planning Document – Consultation Version, January 2020
Document 2	Affordable Housing Supplementary Planning Document – interim Consultation Statement, January 2020
Document 3	Letter from Professor Fiona Matthews
Document 4	Letter from Colyton Grammar School
Document 5	Signed S106 planning obligation
Document 6	Evidence relating to highway safety compiled by Anne West
Document 7	Microdisk with dashcam footage of vehicle travelling between Colyford and Colyton