
Appeal Decision

Site visit made on 19 February 2020

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/U1105/W/19/3241441

Land at Pit Orchard, Bim Bom Lane, Kilmington EX13 7SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jonathan and Mrs Clare Hansford against the decision of East Devon District Council.
 - The application Ref 19/0077/FUL, dated 21 December 2018, was refused by notice dated 20 May 2019.
 - The development proposed is the construction of 5 no. dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant within the statement of case seeks a substitution of the location plan submitted with the original planning application, for one showing a reduced area. The Council accept that the whole of the originally outlined site may not be suitable for development and that a smaller development area may be more appropriate. As such, I have considered the appeal on the basis of the smaller site area and I consider there has been no prejudice in my doing so.

Application for costs

3. An application for costs was made by Mr Jonathan and Mrs Clare Hansford against East Devon District Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues raised in this case are:
 - i) whether the location is suitable having regard to both local and national policy in respect of housing in the countryside, and
 - ii) whether the proposal comprises an efficient use of land.

Reasons

Suitability of location

5. Strategy 7 of the East Devon Local Plan (adopted January 2016) (the Local Plan) sets out that the countryside is defined as all areas which are located outside of the Built-up Area Boundaries (BUABs) and outside specific allocations

on the Proposals Map. In the countryside, development will be strictly controlled and permitted only where a specific Local or Neighbourhood Plan policy explicitly permits it. Strategy 27 of the Local Plan establishes that a BUAB will be designated for the settlement of Kilmington, but that within the settlement no allocations for development will be made. The Council highlight that the site lies outside of the BUAB for Kilmington and there is currently no Neighbourhood Plan in place. Thus, the scheme would conflict with these strategies, which seek to ensure development is located within BUABs and that unjustified development in the countryside does not take place.

6. Strategy 35 states that exception site mixed affordable and open market housing schemes, at villages and outside of BUABs, for up to or around 15 dwellings will be allowed where there is a proven local need. For villages with a BUAB, such as Kilmington, the scheme must be abutting or physically closely related to that boundary. In this instance, the proposal does not include any provision for affordable housing and therefore it would conflict with this strategy.
7. The proposal would thus be contrary to the policies of the development plan in respect of development in the countryside. The appellant asserts that Strategy 7 is inconsistent with the National Planning Policy Framework (the Framework), in that it applies a restrictive approach to development in the countryside, which the Framework does not do. However, Strategy 7 does not preclude all development in the countryside, rather it limits such development to that which accords with specific policies of the Local Plan, or a Neighbourhood Plan. As such, I find that the policy is not inconsistent with the Framework, which advocates that in rural areas, planning policies should be responsive to local circumstances.
8. The site is located within the East Devon Area of Outstanding Natural Beauty (the AONB), where Strategy 46 seeks to conserve the quality and local distinctiveness of the area. In addition to this, policy D1 seeks to ensure that development respects the special qualities of the area in which the development is proposed. Given the sites location outside of any BUAB, the development would introduce built development into a countryside location. Notwithstanding the presence of a partially constructed road, the site shares a greater affinity with the surrounding countryside than with the nearby settlement. The proposed dwellings would therefore diminish the undeveloped nature of the site. As a result, the proposal would conflict with Strategy 46 and policy D1.
9. The site benefits from a previously granted planning permission, which the Council has accepted is extant and capable of further implementation. This permission permitted the construction of six dwellings on the site, but four of these were required to be affordable housing, whilst two were open market. The Council highlights that this permission was granted on the basis that it was an exception to normal housing policies, on the basis of a Mixed Affordable and Market Housing Cross-Subsidy Position Statement, the intention of which was to bring forward affordable housing provision in smaller settlements. The current Strategy 35 of the Local Plan supersedes this position statement.
10. Whilst the existence of this permission is noted, it is clear from the submissions that the grant of that permission was on the basis that the benefits which would result from the provision of affordable housing, which required a

proportion of market housing to provide a cross-subsidy, would outweigh any environmental harm resulting from the location outside of the settlement. There was thus a basis for considering that scheme positively. No such benefits would arise from the scheme that is before me. Consequently, I find that the existence of the extant planning permission is, in this instance, not of sufficient weight to justify a departure from the policies of the development plan.

11. On the basis of the reduced site area, which replicates that of the previously approved scheme on the site, the Council accept that the proposal falls below the threshold for the provision of affordable housing as required by Strategy 34. However, Strategy 34 makes a clear distinction between areas where the thresholds apply and those areas where Strategy 35 will permit development, as an exception to normal planning policy. Furthermore, I am conscious that the Framework states that a lower threshold for seeking affordable housing, other than only for major development, may be set within designated rural areas, which the site lies within given its location in an AONB. Thus, this matter does not alter my findings above, that the lack of affordable housing provision results in a conflict with Strategy 35.

Efficient use of land

12. The appeal scheme proposes the erection of five dwellings, where the previously granted permission on the site establishes that the site is able to accommodate six dwellings. No substantive reason has been advanced to justify this reduction in the number of dwellings provided, other than that the appellant is seeking to ensure that the land is used for a beneficial purpose. I am conscious that the Framework advocates the efficient use of land taking into account matters such as viability. However, I find that insufficient reasons have been advanced to justify a lowering of the density of development on this site. The appellant cites that the lower number of dwellings would make the scheme more marketable, however this has not been satisfactorily evidenced. The scheme therefore conflicts with the efficient use of land aims of the Framework.

Other Matters

13. The appellant refers to a possible financial contribution to a community scheme or project. This however would not appear to be directly related to the scheme that is before me. In any event, there is no obligation before me in this respect. This matter therefore has little influence on my decision.
14. I note that there is also reference to the permitted scheme on the site not being viable. In support of this there is correspondence from local affordable housing suppliers which indicate that they are not willing to acquire the affordable dwellings. However, the policy context which permitted the scheme, and that which continues to support the development of the site for predominantly affordable housing, as an exception to normal planning policy, allows for a proportion of open market dwelling to be constructed in order to subsidise the development of affordable housing. The Council highlights that the policy does not take into account matters of viability due to the subsidy provided by market dwellings and the lower land values expected on such sites. As such, I do not find this matter of sufficient justification to result in allowing the appeal.

15. I acknowledge that the development would result in economic benefits, both during construction and afterwards. Furthermore, the scheme would utilise a brownfield site which is encouraged by the Framework. However, these matters however are not sufficient to outweigh the harm that I identify above.
16. The appellant also contends that it is the difference between the approved six and the proposed five dwellings that should be addressed. Whilst this is noted, the scheme before me does not simply propose a reduction in numbers, it also proposes a scheme with a different tenure of units, from a part affordable/part open market scheme, to a wholly open market scheme. This results in the policy context for the consideration of the proposal being different from that which allowed the previous scheme. As such, it is relevant that the change in applicable policies be considered.

Conclusion

17. Accordingly, for the reasons given above and having regard to all matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR