

# Appeal Decision

Site visit made on 26 August 2021

**by M Scriven BA (Hons) MSc CMgr MCIHT MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 September 2021.**

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**Appeal Ref: APP/Y1138/W/20/3262395**

**Land to the rear of Barton Close, Cheriton Fitzpaine**

**Grid Ref E:286628 N:106169**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Mike Foan against the decision of Mid Devon District Council.
  - The application Ref 20/00745/MOUT, dated 30 April 2020, was refused by notice dated 17 September 2020.
  - The development proposed is the erection of 12 dwellings (50% affordable).
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## Decision

1. The appeal is dismissed.

## Preliminary matters

2. For consistency and accuracy, I have taken the site address as it has been referred to in the Council's Decision Notice and the submitted Appeal Form.
3. The outline application is submitted with all matters reserved for future consideration. The appellant has identified two points of access to the intended development, one for the purpose of construction and one to serve the site once built. As the existing accesses already lead to adopted highway and are set within wider highway frontages, I consider that details of access could be dealt with as a reserved matter. An indicative site layout drawing has also been provided, which I have considered to be illustrative only.
4. I acknowledge that the Local Plan changed prior to the Council's determination of the scheme. I am satisfied that, for the appeal before me, all parties have had adequate opportunity to comment on the now adopted Local Plan<sup>1</sup> and I have taken these into consideration in reaching my decision.
5. The National Planning Policy Framework (the Framework) was revised in July 2021, after the submission of the appeal. Therefore, the main parties were given opportunity to comment if any changes affected their submissions, no further arguments were advanced.

## Main Issues

6. I consider the main issues to be;
  - Whether the appeal site is a suitable location for the proposed development, having particular regard to local housing policy;

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<sup>1</sup> Mid Devon Local Plan Review, 2013-2033, adopted July 2020

- The effect of the proposal on the character or appearance of the surrounding area, with particular regard to the setting of the adjacent Cheriton Fitzpaine Conservation Area;
- The effect of the proposed development on the setting of listed buildings, specifically the Grade II\* listed Poole Barton and the Grade I listed Parish Church of St Matthew;
- Whether the proposal would represent an acceptable form of development having regard to its flood zone location and the provisions of the National Planning Policy Framework; and
- Whether the proposal would make adequate provision for any additional need for infrastructure, services and facilities arising from the development.

## **Reasons**

### *Suitability of the site for the proposed housing development*

7. The appeal site is a field located adjacent to, but outside of the settlement boundary of Cheriton Fitzpaine. The appeal site is not identified for future development in the Local Plan.
8. Policy S14 of the Local Plan seeks to control development in the countryside by setting out exception criteria in such locations. The proposed development would not include any mixes of use relating to retail, employment, tourism, farm diversification or it being an extension to existing buildings. Likewise, it does not comprise agricultural or equestrian development, similarly it is not for community facilities or renewable energy and telecommunications. Therefore, I find that criteria b) to f) of the policy cannot be deemed to have been complied with.
9. Criteria a) does, amongst other things, allow for predominantly affordable and low-cost housing sites outside of settlement boundaries where it would meet a local need. In such circumstances, Policy DM6 of the Local Plan is triggered, which permits market housing subject to it being at the lowest level necessary to ensure the development is deliverable.
10. I note that the scheme would make a provision for 50% affordable housing, which I accept is a considerable provision and is a benefit of the scheme. Nevertheless, I find that this does not equate to the development being predominantly affordable housing. I also have no associated viability appraisal, or similar justification, before me to consider that the proposed level of market value housing is necessary so as to deliver the intended development. Moreover, I have no planning obligation before me to secure the affordable housing component meaning little weight is given to the benefit it would bring.
11. Furthermore, the Council states that the need for such housing is to be greatest in the larger settlements and towns of the District, closer to necessary services and employment, and that the Cheriton Fitzpaine affordable housing needs equates to only two units, in part due to other developments which have been granted approval nearby. I have little substantive evidence to the contrary, as such I cannot be satisfied that the proposed amount of affordable housing is required so as to meet an evidenced local affordable housing need to weigh against Policy S14.

12. I acknowledge that the proposed housing would be within close proximity to a bus stop. However, little evidence is before me as to the timing and frequency of the bus services. Accordingly I am unable to conclude with any degree of certainty that the area is well served by public transport facilities. In my view it is inevitable that the site's rural location would result in a high dependency on private car use to access necessary goods and services.
13. The proposal would assist in delivering 12 new, intended to be energy efficient, homes in the District and I do attach weight to the benefit this would bring. I also accept there would be some minor economic benefit associated with the construction of the development and no doubt local businesses and sports clubs would benefit from the usage additional residents would bring to the village. However, in the absence of evidence to the contrary, in my view these benefits would be marginal given the number of dwellings proposed and not capable of outweighing policies which seek to protect against development outside of settlement boundaries.
14. Therefore, for the reasons above I cannot be satisfied the appeal site forms an acceptable site for the proposed development. As such the proposal would not accord with Policy S14 and Policy DM6 of the Local Plan, the intentions of which are described above. Likewise, it would not accord with Policy S1 which amongst other things, seeks to ensure development proposals support the creation of sustainable communities.

#### *Cheriton Fitzpaine Conservation Area*

15. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of CAs. Similarly, the Framework at paragraph 199 also explains that great weight should be given to historic asset's conservation.
16. The appeal site sits centrally below the built form of the village and the adjacent Cheriton Fitzpaine Conservation Area (CA). This, coupled with the surrounding rolling topography of the landscape, makes the field clearly visible from public viewpoints towards the CA from the direction of Stockleigh English, particularly when seen from Holly Water Lane. The field itself also creates a natural foil to the edge of the settlement, positively contributing to the character and appearance of the area and the CA in its rural setting.
17. The CA extends over much of the village and contains many historic and listed buildings which date from between the 15<sup>th</sup> and 19<sup>th</sup> Centuries, having developed along the narrow lanes which serve them and the boundary of the field, creating an example of a historic Devon village. Furthermore, the field itself is referred to in the CA Appraisal<sup>2</sup> as being part of the historic core of the village. Historic mapping is also provided, demonstrating the site's linkage with the settlement, apparently including having been used as an orchard and more recently pastoral grazing serving the nearby Poole Barton.
18. I note that the indicative layout plan shows a relatively low-density development and the appellant contends that the appearance of the buildings could assimilate with those nearby. However, the proposal would nonetheless result in the construction of dwellings which would greatly expand the built

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<sup>2</sup> Cheriton Fitzpaine Conservation Area Appraisal and Management Plan, 2015

form on the western rural slopes of the settlement. This would result in development in an elevated and prominent position, particularly when perceived from Holly Water Lane. To my mind, the proposal would as a result, erode an important characteristic of the setting to the settlement and the CA, that being the largely undeveloped rural character of this side of the village. As such, I consider that the proposal, would as a matter of principle, harm the character and appearance of the area, including the setting of the CA.

19. I do acknowledge that views of the site from the CA itself appear to be largely limited to those properties immediately adjacent to it rather than from public viewpoints. However, this does not alter my conclusion given the contribution the site makes to the wider area and particularly the CA.
20. The proposed development would fail to preserve or enhance the character or appearance of the CA. Instead, it would represent significant, albeit less than substantial, harm to the heritage asset, as the site is seen in the same context as the historic core of the village and associated CA. Therefore, the proposal would be contrary to Policies S1, S9 and DM25 of the Local Plan, which collectively seek to ensure development proposals preserve or enhance Mid Devon's historic environment and reinforce local character and distinctiveness. For the same reasons the proposal would also be contrary to the Framework's objectives of conserving and enhancing the historic environment.

#### *Listed buildings*

21. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 sets out that, in considering whether to grant planning permission for development which affects a listed building, or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Framework also make clear in paragraph 199 that great weight should be given to the conservation of designated heritage assets and their setting.
22. The two closest listed buildings to the proposed development are the Grade I listed Parish Church of St Matthew, sitting above the appeal site, and the Grade II\* Poole Barton, located behind associated barns that I am informed are within the historic building's curtilage.
23. As pointed out by the Council, the significance of the setting of both listed buildings is not solely limited to the architectural qualities and age of the buildings themselves. The setting of the Church of St Matthew's is informed by its prominent elevated central position when seen from the west, making the building more apparent by the absence of any significant developed form below it, particularly in the in the appeal site. Likewise, the setting of Poole Barton is clearly informed by the open pasture of the field in that it provides a clear link to its associated agricultural past as a historic farmstead.
24. In my view, the proposed development of the field would harmfully erode the setting of the Grade I listed Church. It would dilute its prominence in views of the wider settlement when seen from the west. Likewise, for the reasons above an important historic linkage of Poole Barton with the adjoining land would be harmfully lost. Furthermore the new development would encroach towards its distinct part barn lined boundary with Poole Barton.

25. The appellant contends that the proposal would result in funding to repair and enhance Poole Barton, citing a previous Inspector's decision<sup>3</sup> to justify the argument and that Historic England's Planning Guidance Note 4 (GPA4) should carry substantial weight in determining the proposal's effect on the heritage asset. Yet there is little rationale as to why and the content of the appeals appears to differ markedly.
26. I acknowledge from external visual inspection Poole Barton and particularly the associated barns appear to require maintenance, this is also recognised by the Council. However, in apparent contrast to the appeal cited, I have insufficient details of any condition survey or a schedule of required works before me to consider. Similarly, I have an absence of detail regarding the cost of such works or any means to secure that these would occur as a direct result of the development through any form of planning obligation. Therefore, I cannot reasonably conclude that the Grade II\* listed building or the associated barns would definitively benefit from repair or enhancement as a direct result of the proposal.
27. Moreover, although no detailed designs have been provided, I find that any attempts at reserved matters stage to be sympathetic to the appearance of nearby buildings or attempts to give the development the appearance of a natural continuation of the village, would not overcome the loss of the field, which is fundamental to the setting of the referred to listed buildings.
28. I consider the resultant harm to both listed buildings would be less than substantial. However, the proposed development would not preserve or enhance the setting of the Church of St Matthew and a key component of the setting of Poole Barton would be irreplaceably lost thereby harming its setting. Therefore, the proposal would not accord with Policies S1, S9 and DM25 of the Local Plan, which amongst other things combined seek to ensure development proposals preserve or enhance Mid Devon's designated heritage assets and their settings. Likewise, the proposal would contrary to the Framework's objectives of conserving and enhancing the historic environment.

#### *Heritage balance*

29. In such instances where the harm to heritage assets, in this case the CA and forementioned listed buildings, is less than substantial, it should be weighed against the public benefits of the proposal. In addition to the public benefits referred to above, including additional market and affordable housing, as well as to the vitality of the village and the local economy, the appellant has also listed various other perceived public benefits of the proposal. However, there is little substantive detail to support those arguments and, in my view, the stated public benefits do not outweigh the identified harm to the designated heritage assets.

#### *Flooding*

30. The main parties concur that the southwestern part of the appeal site is located within Flood Zone 3. This is also shown on publicly available flood risk mapping and is defined by the Environment Agency (EA) as having a high probability of flooding. The Framework states at paragraph 159 that development proposals should be located away from areas at highest risk of flooding.

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<sup>3</sup> APP/R0660/W/19/3221564

31. In such locations, when considering development proposals, the Framework states that a Sequential Test (ST) is required to demonstrate that there are not alternative sites in the area to provide similar sized development of lower flood risk. The Planning Practice Guidance<sup>4</sup> also states that only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test (ET) if required.
32. Whilst I have a site-specific Flood Risk Assessment before me, incorporating amongst other things, suggested design measures that could be adopted to protect the proposed homes from flooding, I have no ST and I have no evidence that one has been undertaken at the site in the past. The principal of the proposal must, on this matter alone, be questioned as better and more suitable sites may exist.
33. Furthermore, there is no mechanism before me in which would restrict properties from being built on the most sensitive Flood Zone 3 areas of the site. Notwithstanding the appellant's indicative site layout shows an arrangement of dwellings located immediately abutting Flood Zone 3, and the ground underfoot at the time of my visit was dry, the outline proposal before me is for 12 houses across a wider defined site, part of which is located in Flood Zone 3. The submitted layout drawing is indicative, therefore I can have no surety that it would be reflective of that which would ultimately be built and, as explained by the EA an associated ST is required at the point of the decision for the site as a whole.
34. I acknowledge that the proposals incorporate an access to the north east of the site, located in Flood Zone 1, which would provide a dry route in and out of the indicative layout in the event of flooding. I also accept that detailed information relating to surface water drainage may be appropriate to be dealt with at a future stage. However, I cannot reasonably conclude that the proposal, at this point in time makes adequate provision for appropriate surface water drainage measures given an absence of such information.
35. On the basis of the information before me, the proposed development would not accord with Policy DM1 of the LP, specifically part f) which seeks to ensure that development proposals make adequate provision for drainage. Likewise, the proposed development would not accord with criteria c) of Policy S9 of the LP which seeks to guide development to areas at lowest risk of flooding by applying a ST where appropriate. Similarly, the proposed development would not satisfy the objectives of the Framework relating to flood risk.

### *Planning obligations*

36. In addition to lack of a planning obligation to secure the proposed affordable housing component of the scheme, planning contributions were also sought by the Council relating to public open space, play areas and health services. The appellant does not contend that being requested is unreasonable, albeit the forewarning is questioned, instead being of the view that such matters could be dealt with at a later date when dealing with reserved matters.

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<sup>4</sup> Paragraph: 019 Reference ID: 7-019-20140306

37. In the absence of evidence to the contrary I have no reason to disagree with the parties on this matter and find that an obligation would meet the tests of Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Regulations 2010.
38. If the appeal were otherwise acceptable my decision would have the effect of being the permission for future development of the site for 12 homes, therefore such matters need to be secured through a planning obligation at the time of my decision, not at a later date. In the absence of a legal agreement before me, I conclude that the scheme fails to provide for adequate mitigation made necessary by the proposed development or to secure the benefits of affordable housing and repairs to Poole Barton.
39. Therefore, the proposal would not accord with Policy S8 of the Local Plan which seeks to ensure that development proposals are served by associated necessary infrastructure. More specifically the proposal would also not accord with Local Plan policies S1, S3, S5, which combined amongst other things, seek to ensure the provision of sustainable communities, that meet housing needs and provide for adequate public open space.

### **Other matters**

40. In reaching my decision, I have noted the representations made in support of the proposal.
41. Whilst I acknowledge the content of the appellant's ecological appraisal, the findings and recommendations do not lead me to a different conclusion regarding the appeal. Furthermore, that the proposal would accord with other policies of the Development Plan is of no more than neutral weight.
42. It is common ground that at the time of the application the Council were unable to demonstrate an adequate 5-year housing land supply. However, before their decision was made, the new Local Plan was adopted and an adequate forward supply of housing land was evidenced. I have no evidence before me to the contrary. On that basis, I have made my decision on the evidence before me and having not engaged the so-called tilted balance.

### **Conclusion**

43. I have found the proposed development to conflict with the Development Plan in respect of the main issues. In my view, the harm identified above is not outweighed by the benefits of the scheme and I do not consider that other material considerations would outweigh this conflict with the Development Plan.
44. Therefore, having considered all matters raised, when considered against the Development Plan and Framework as a whole, the appeal is dismissed.

*M Scriven*

INSPECTOR