



Appeal Decision

Hearing Held 12 & 13 October 2021

Site Visits made on 27 July & 19 October 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2021

Appeal Ref: APP/Y1110/W/21/3270745

Land off Ikea Way, Exeter EX2 7RX

- 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 Bovis Homes (part of Vistry Group) against the decision of Exeter City Council.
 - The application Ref 19/1647/FUL, dated 8 November 2019, was refused by notice dated 4 December 2020.
 - The development proposed is erection of 200 dwellings (use class C3), means of access, public open space and associated infrastructure.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Bovis Homes against Exeter City Council and by Exeter City Council against Bovis Homes. These applications are the subject of a separate Decision Letter.

Preliminary Matters

3. The Council's second reason for refusal alleged a lack of information in respect of various matters. It has subsequently been confirmed that the Council no longer has concerns about the safety of the railway or air quality. I have no reason to disagree with that position. Technical highway matters could be dealt with by conditions and/or any future highway related legal agreements.
4. There remains dispute about the approach to surface water drainage, that I deal with in the first main issue; and contributions to a cycleway, that I deal with in the third.
5. A planning obligation has been provided that would secure the provision of Affordable housing, public open space provision and management, a travel plan contribution, and funding for a Traffic Regulation Order. Dependent on my findings in respect of the second and third main issues, it would also provide for contributions to cycling infrastructure and to mitigate effects on healthcare and education.

Main Issues

6. The main issues are:

- (a) Whether the proposal would result in a well-designed place;
- (b) Whether there would be adequate mitigation in respect of any impacts upon healthcare and education facilities; and
- (c) Whether the development should provide for improvements to strategic cycle links in the city.

Reasons

Design

- 7. The National Planning Policy Framework (the Framework) sets out the importance of high quality design in new development. It states that good design is a key aspect of sustainable development and creates better places in which to live and work. Policies and decisions should also aim to achieve healthy, inclusive and safe places which, amongst other things promote social interaction, opportunities for meetings, and provide the social and recreational facilities for community needs. Access to a network of high quality open spaces are stated to be important for the health and well-being of communities.
- 8. The proposed residential development would be primarily arranged along connected streets. A clear hierarchy, created by different building styles, sitings and parking arrangements, would give the streets individual characteristics assisting with legibility. Deflections and landscaped nodes within the street would generally create interest and a sense of place. This is with the exception of an area to the side of plot 53, where long views along a straight street would terminate at an open parking area, creating a poor sense of enclosure and loss of townscape quality. That effect would be relatively localised, though, and not result in an overall harmful appearance.
- 9. With some exceptions, parking courts would mainly be used for the various flatted blocks, which would be appropriate for these semi-communal living arrangements. They would usually be located to the rear of buildings, such that they would not harm the townscape. A high amount of parking on the streets would be punctuated with regular tree planting, creating rhythm and breaking up the expanses of hard surface and vehicles. There is no substantive evidence to support the Council's suggestion that the chosen trees would not survive in this environment, so I find the arrangements to be acceptable.
- 10. The site has one residential boundary and is otherwise bordered by a dual carriageway, railway line and large Ikea retail store, together with its car park. Additional planting is proposed along the boundaries with the road and car park. Although there is some uncertainty about the levels along the car park boundary, from my on-site observations, the sections provided with the appeal documents showing this appear to be realistic. Some retaining structures may be required, but given the nature of this adjoining space and extensive planting proposed, the development would have an acceptable visual relationship with the car park area.
- 11. Along the road boundary, some of the off-site planting relied upon is on steeply falling ground. It is far from clear whether this would be effective in providing a

good backdrop to those future residents. However, planning conditions could be used to secure additional planting and, while this would diminish the garden sizes, they would still be sufficiently proportioned to meet future residents' needs.

12. Surface water attenuation facilities would be underground, but the topography of the site makes open storage solutions challenging. I was told that tanked systems could still be regarded as sustainable urban drainage schemes, albeit not the most favoured approach. As ground levels are currently artificially inflated, making full assessment of ground conditions challenging, it is difficult to provide a finalised drainage scheme now, despite this being a full application. However, once preparatory work is carried out, planning conditions could be used to maximise the amount of attenuation within or close to individual plots.
13. Policy DG5 of the Exeter Local Plan First Review 2005 (LP) requires 10% of the gross development area to be provided as level open space. At the Hearing, the Council confirmed that a variety of functions should be provided within the 10%. These include facilitating formal and informal recreation, children's play, ecological enhancement and nature conservation, as well as links to green travel routes. Given the multi-functional roles expected and overall quantum of space, the 10% numerical threshold has been met.
14. A linear strip of open space between the site and railway line would house a cycleway that is part of a wider network around the Newcourt area and beyond. Alongside this would be areas given over to biodiversity and some informal recreation. It would also allow delivery of a Multi-Use Games Area (MUGA), should the Council be unable to deliver one elsewhere in Newcourt. The Council confirmed that formal recreation provision is a legitimate function of open space so the MUGA is a justifiable use of it.
15. The MUGA would not be ideally sited to serve the needs of the wider Newcourt development area, being sited right at the edge of the community. However, this site is, in itself, at the edge of Newcourt and other locations within this development would not be much better in that regard. The MUGA would be located alongside the strategic cycle route, so it would be easily accessible to the wider community. Although users resident at this site would have to cross the bus/cycleway, this would not be heavily trafficked by motor vehicles, so I find that it would not be unsafe. It would be overlooked by some dwellings and users of the cycleway and, given the substantial buffer zones required between dwellings and a MUGA, I find it unlikely that a more suitable location within this site could be found from a security perspective.
16. There would be other space that could be used for casual sitting out in the areas around the site entrance, but they would fail to provide any meaningful opportunities for children's play. On the basis of the information on levels before me, it appears that on arrival into the site, the space to the left of the road would be too steep and too close to the road to be safe. The triangular shape of the other space would limit usability of large parts of it. Although sited alongside a well-used route, as advocated in the Council's SPD on Residential Design, these spaces would not be particularly restful either, being bisected by the main access to the site and close to the adjoining Ikea car park. Due to the size, shape and proximity to roads, then, the extent to which they would be used by residents for sitting out is highly questionable. The space would

- provide a good transition into the residential environment, sense of arrival, and buffer to the houses from the adjoining retail site, but would not be a high quality recreational environment.
17. The Council is satisfied that a Locally Equipped Area for Play (LEAP) on the adjoining development would be within a suitable walking distance of the proposed houses for all but the youngest of children and I have no reason to disagree. There is no proposal to accommodate Local Areas for Play (LAPs) to meet young children's needs on the site.
 18. While some equipment could be accommodated within the linear space alongside the railway line, those residents closest to the Ikea store car park would be some distance from that provision. The communal garden spaces provided alongside the flatted blocks on that Ikea boundary would not meet play needs, as they would be surrounded by buildings and car parking at close range. Those residents, without private gardens, at greatest need of LAP provision, would, therefore be worst provided for. LP Policy DG5 specifically requires children's play facilities. In the absence of a LAP or other suitable provision for young children, therefore, I find that the development conflicts with it.
 19. The development would be seen alongside the adjoining residential development. It provides further public open space that would adjoin that proposed around the site entrance. However, there would be significant level changes between the site and much lower adjoining open space.
 20. I was told by the appellant at the Hearing that the correct townscape response was to frame this adjoining open space with the development. Dwellings would front this open space at right angles to those already existing, off-site. The new dwellings – plots 197-200 – would be considerably higher than their existing neighbours. The separation distances and relative positions would prevent harm to living conditions. However, while the land rises up towards the site boundary, limiting the height of retaining walls to a maximum of 900mm, the dwellings would loom over the open space and have an awkward visual relationship with the existing dwellings.
 21. Existing boundary planting would, effectively, bisect the space and mean that plots 197-200 would not be seen in association with the proposed open space at the appeal site. Thus, while the townscape response and desire to 'complete' the adjoining open space, may theoretically be valid, and in plan form looks to be achieved, it would not be successful in three-dimensions. Steps could be provided between the spaces, but a blended, cohesive open space would not be realised. At this key junction with surrounding development, in a location highly visible in the public realm, the proposal would fail to respect its context.
 22. For these reasons, the proposal would conflict with those aims of LP Policy DG1 that seek to ensure that development is fully integrated into the surrounding townscape, with heights that relate well to adjoining buildings and spaces. This policy, while of some age, sets out criteria to establish how well-designed development should be judged. In that respect, it is consistent with the Framework, insofar as it seeks to create high quality places.
 23. Overall, while sufficient quantity of overall space has been provided, there are significant shortcomings in terms of play opportunities for young children, and the quality of the casual recreation opportunities, particularly given the inability

of the space at the entrance to link effectively with the adjoining space. Together with the awkward visual appearance where the neighbouring developments would meet, this means that the proposal would not be sympathetic to the surrounding built environment, nor create an inclusive, accessible place. It would not be visually attractive and would fail to promote healthy living and well-being, with a high standard of amenity for future users. It would, therefore, conflict with the design policies of the Framework, and those aims of Policy CP17 of the Exeter Core Strategy (CS) that seek to ensure that development at Newcourt promotes social interaction, inclusion and healthy living.

Effects on healthcare

24. The funding of NHS services is complex. Regional NHS budgets are derived from a variety of data sources, that include population projections and, thereby, theoretically at least, account for expected population increases from planned development. Funding is provided to Clinical Commissioning Groups (CCGs) that commission healthcare services from a variety of providers. The Royal Devon and Exeter Foundation Trust (FT) is one such provider within the NHS commercial marketplace and provides acute healthcare and community healthcare services to the local population.
25. Arrangements with the CCG are such that the majority of FT funding is based upon the previous year's performance. This means that, in effect, the FT is unable to pay for increased provision arising from the additional demand of a higher resident population within its area, with a 12-month time-lag before increased demand is reflected in increased budget. Although there would be no overall increase in demand on the NHS considered nationally, regionally, the FT is not immediately responsive to population change. I was told the reason for the time-lag was because of the nature of the contract between the local CCG and the FT.
26. This site is part of a wider allocation in the development plan that I understand is not set to exceed its projected population. Moreover, where a funding shortfall is the consequence of a commercial contractual arrangement, it may be unreasonable for a developer to fund that gap. This was broadly the finding of an Inspector and the Secretary of State in a recent appeal at Wolborough Barton¹ where it was found that there was flexibility in the contracting arrangements. Indeed, there is no similar request from other commercial providers of NHS services.
27. However, while there may be legal flexibility in the contract terms, I was told, and it was not disputed, that the arrangements entered into are based upon central Government guidance surrounding the negotiation and form of NHS contracts. Whatever may be the reasons for service provision not accounting for known population increases, especially those arising from the development of allocated sites, that is the situation that appears to exist. I note the appellant's concern that, in reality, any contribution could be used to effectively fill an existing budget shortfall, rather than funding services. However, regardless of any existing deficit in the FT's budget, additional demand would still have to be funded.

¹ APP/P1133/W/18/3205558

28. Ultimately, residents of the development would require the services of the FT. As the largest provider of acute care, it does appear to differ from other commercial providers within the NHS arena. The requested contribution has been calculated based upon a number of factors including cost of provision, the likely increase in population, and the demand that would be expected to be placed on the service in the first year, until such time as funding streams acknowledged their presence. That is a direct link to the use of land.
29. I am well aware that this conclusion differs from the Wolborough Barton case. However, the appellant's evidence itself cautions against comparisons to different areas where FTs may have different contractual arrangements with the respective CCGs. Nevertheless, given prevailing central guidance to the NHS, it would appear that something akin to the current arrangement exists in the vast majority of FTs and other Inspectors have similarly found contributions of this nature to be appropriate. There is, thus, no established consensus on the matter, and my finding here is based upon the evidence before me.
30. In addition, the development would place extra demand on GP services, where local surgeries have limited physical capacity to accommodate them. The required space relative to GP practice list size is derived from a national formula so the amount of floor space associated with a population increase can be calculated. While the contributions requested may not be directly linked to the cost of the various works to expand capacity at the affected practices, it is directly attributable, via the formula, to the demand that would be placed by this development. It would, therefore, be fairly related in scale and kind to the impact.
31. Although the appellant thinks funding for surgery expansion should have been accounted for in known population increases, it has not been demonstrated that funding given to CCGs goes beyond that required for the commissioning of services. Additional space would be required to mitigate the effect of the development and I have no substantive evidence that funding is available from elsewhere. A pro-rata contribution to the required floorspace, based upon the population of the development is justified.
32. I, therefore, find that the development would harmfully impact upon the ability to provide healthcare services to residents of the development and other existing residents in the area. This would not be adequately mitigated by existing funding streams and the GP Surgery Contribution and FT Contribution set out in the planning obligation would, therefore, be justified. Although the FT contribution is not supported by the Council, it is required to ensure healthy communities in accordance with the Framework, and the aims of CS Policy CP10 to provide facilities to meet community needs. Both, therefore, serve a planning purpose.

Effects on Education

33. Additional population from the development would place additional demand on education infrastructure. The Council has identified a need for funding for secondary school places and Special Educational Needs (SEN). The Council's evidence does not clearly demonstrate why there would be a particular demand for SEN that was not accounted for within ordinary school budgets, or whether there would be a shortfall in specialist places, so I find that such a contribution has not been justified.

34. Secondary school expansion is taking place through the development of a new school in South West Exeter. Once open, the school would free up spaces closer to the appeal site for future residents of the development. I understand that the school is under construction and there is no particular indication that it is not already fully funded. The proposal would, therefore, not create a deficit of school places that is not already being remedied and there would be no adverse effect on education provision. Consequently, it has not been demonstrated that contributions to education infrastructure are necessary to avoid a conflict with those aims of LP Policy CP10 that seek to ensure the provision of adequate education facilities.

Cycling infrastructure

35. Traffic modelling was prepared for the development on the basis of assumptions of a modal split used for the overall development of Newcourt and less development is now proposed than has previously been permitted at this site. The Council advises that the assumptions related to cycling were based, in part, on the delivery of an upgraded cycle route 'E9' to the city centre and that this is required as mitigation to off-set forecast trip rates.
36. Compared to cars, the peak trips estimated to take place by bicycle are relatively small in number and, in any case, it has not been demonstrated that all of those trips would make use of the E9 route. Therefore, even without the E9 upgrade, the corresponding increase in peak-time car traffic would likely be small. Although the earlier permission has lapsed, I have no reason to find that the modelled assumptions would not be met or that the local highway network would not continue to operate within its design capacity. As such, there would not be a demonstrably severe impact on the highway network, even without the upgrades.
37. The site is close to important services and facilities to meet the needs of future residents. There are also good bus and rail connections to the rest of the city and beyond. Upgrades to strategic, city-wide cycle routes would assist some future residents but are not, therefore, necessary to make the development acceptable in accessibility terms. Furthermore, it has not been shown that the targets for modal shift to bicycle, set out in the travel plan are dependent upon the delivery of the E9 improvements.
38. I understand that contributions have historically been sought from developments at Newcourt and the Local Highway Authority has confirmed that the E9 route was previously a key item on the CIL 123 list. It is not clear whether there has already been adequate contribution made to complete the route, or the extent of any funding shortfall that may exist. I, therefore, find that the requested contribution to the E9 cycleway has not been adequately justified as being in scale or kind related to the development. Nor has it been demonstrated to be necessary to make the development acceptable in planning terms or avoid a conflict with LP Policies CP9 and CP18, or CS Policy APT1 that set out generic requirements for improvements to the city's cycling infrastructure, and the need for appropriate infrastructure to serve new developments.

Planning balance

39. There is dispute over whether the Council can demonstrate a 5 year supply of housing. If it cannot, then paragraph 11(d) of the Framework would fall to be

considered. Although no forensic analysis had been carried out, the appellant indicated at the Hearing that the supply was, in their view, likely to be around 4 years. The Framework seeks to boost significantly the supply of housing and it is particularly critical that sites allocated in a development plan are not delayed from delivery. If I were to accept the appellants position, then the benefits associated with the delivery of housing would receive substantial weight.

40. Nevertheless, the Framework sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. It also indicates that access to a network of high quality open spaces is important for the health and well-being of communities. While the delivery of housing is clearly important and a key aim of the Framework, this guidance is in the context of the need for high quality built environments and it does not indicate that delivery should be at the expense of these fundamental outcomes of development. Whilst I note the appellant's contentions about the current housing situation, The built environment will exist for many years and must continue to provide high quality, healthy living environments for future generations.
41. The site is constrained and certain elements, such as the location of drainage infrastructure, the points of access and the existing cycleway are, to a large extent fixed. Nevertheless, for the reasons given in consideration of the first main issue, I find that this proposal falls appreciably short of the standards on beauty and quality expected by the Framework. Even if I accept the appellant's position on the housing supply shortfall, this is a harm that significantly and demonstrably outweighs the benefits in this case when considered against the policies of the Framework, taken as a whole.
42. I, therefore, find that the proposal does not benefit from the presumption in favour of sustainable development outlined in the Framework. On the basis of my findings in respect of the first main issue, the proposal is contrary to the development plan. Material considerations, including the benefits associated with open market and affordable housing delivery, do not indicate otherwise that permission should be granted.

Other Matters

43. The appellant contends that if the contributions to the NHS are necessary, the development could not provide a full compliment of affordable housing. Had I been allowing the appeal, I would have needed to explore this matter further. However, even if I were to adopt appellant's position on the matter, this would not affect my decision on the appeal overall.

Conclusion

44. For the reasons given, the appeal is dismissed.

M Bale

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ryan Austin BSc MIHE – Civil Engineer
Alex Graves MRTPI – Agent
Sean Hindes BSc MA MRTPI – Senior Design Director, Pegasus Group
John Parry – Regional Land Director, Vistry Group
Caroline Waller – Solicitor

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Burrows FRICS MA (Cantab) – Principal Director, Burrows Hutchinson Ltd
Simon Curran LLB – Solicitor
Howard Smith BEng MA MRTPI
Katharine Smith BA MA MRTPI – Principal Project Manager, Local Plans
Alex Thomas BA MSc MCIHT – Senior Highways Development Management Officer

INTERESTED PARTIES:

Miss Leenamari Aantaa-Collier – Solicitor
Malcolm Dicken – NHS Devon Clinical Commissioning Group
Lisa Franks – Project Accountant Royal Devon & Exeter Foundation Trust

DOCUMENTS SUBMITTED AT THE HEARING

1. DCC²: Highway Consultation dated 30 September 2021
2. DCC/ECC³: Planning Obligations – Statement of Compliance with the Community Infrastructure Levy Regulations 2010 (as amended)
3. CS Policy CP12
4. CS Policy CP15
5. ECC: Planning Obligations Supplementary Planning Document April 2014
6. ECC: Public Open Space Supplementary Planning Document September 2005
7. ECC: Residential Design Supplementary Planning Document September 2010
8. ECC: Sustainable Transport Supplementary Planning Document March 2013
9. Complete Intel: GDV (version 3) dated 26 June 2020
10. Appeal Decision Ref APP/Y1110/A/14/2217494 – Land at Pinhoe Road, Exeter
11. Lichfields: Fine Margins – Viability assessments in planning and plan-making dated August 2021
12. Plot Cost analysis (Spreadsheet, on behalf of ECC)
13. Planning Permission Ref. 19/1375/OUT Decision Notice and Section 106 Agreement
14. Royal Devon & Exeter NHS Foundation Trust: Response to Council's CIL Statement, dated 13 October 2021
15. ECC: Five Year Housing Land Supply Statement 2021
16. Drawing P18-2919_20 – No 43 & 45 Mulligan Drive Outlook
17. Vectos: Highway Briefing Note (appellant's response to National Highways representation)
18. Appellant's Closing Statement

² Devon County Council

³ Exeter City Council