



Appeal Decision

Site visit made on 8 February 2022

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/K1128/W/21/3282469

Dennings, Wallingford Road, Kingsbridge, TQ7 1NF

- 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 Dick Whittington Developments Ltd against South Hams District Council.
 - The application Ref 3830/20/FUL, is dated 8 January 2021.
 - The development proposed is the erection of six new dwellings.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Dick Whittington Developments Ltd against South Hams District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In the interests of consistency, I have used the description of development as included at section E of the appeal form in the banner heading above.

Main Issues

4. The Appellant has submitted this appeal on the basis of non-determination of the planning application. Following the submission of the appeal against non-determination, South Hams Council (the Council) has identified the reasons the Local Planning Authority would have given to refuse consent. The Appellant has seen these details and has had the opportunity to respond.
5. In light of the submissions in this appeal, the main issues are:
 - Whether or not adequate arrangements are made for the disposal of surface water from the site,
 - Whether the proposed development would constitute an efficient use of land; and,
 - Whether the proposed development makes adequate provision for any additional need for infrastructure arising from the development.

Reasons

Drainage

6. The appeal site is located within Flood Zone 1. Nonetheless, the site is located in a Critical Drainage Area (the CDA) as identified by the Environment Agency.
7. Amongst other matters, Policy DEV35 of the Plymouth and South West Devon Joint Local Plan 2014- 2034 (March 2019) (the Local Plan) provides that development should incorporate sustainable water management measures to reduce water use, and increase its reuse, minimise surface water run-off, and ensure that it does not increase flood risks or impact water quality elsewhere. Surface water from proposed developments should be discharged in a separate surface water drainage system which should be discharged according to the drainage hierarchies set out in the Plymouth and Devon Local Flood Risk Management Strategies. Policy DEV35 also provides that for developments located within the CDA, a Drainage Strategy should be included, setting out and justifying the options proposed, present supporting evidence, and include proposals for long term maintenance and management.
8. Following submission of a Flood Risk Assessment, the Appellant has put it to me that, subject to the outcome of infiltration tests, there would be two possible strategies that could be implemented, and which would adequately manage the disposal of surface water at the site. It is maintained by the Appellant that in the event that both the two possible strategies for disposal of surface water were not found to be feasible, that a further fall back option of disposal through a sewer has been agreed with South West Water.
9. It is noted that the Council's Drainage Specialist, having considered further information provided by the Appellant, removed their earlier objections to the scheme and indicated that final details of the proposed surface water drainage could be adequately secured by a pre-commencement planning condition. Such a planning condition would provide a sequenced approach to securing the most sustainable drainage option, with specific details of alternative options to be provided as necessary.
10. However, from the evidence before me it appears that the removal of the earlier objection by the Council's Drainage Specialist relies on there being a confirmed fall back position to dispose of surface water through a dedicated sewer in agreement with South West Water. In my view, in the absence of information that confirmed that soakaway or attenuation was shown to be viable, evidence to show that the alternative fall back option was agreed and feasible would be required.
11. In this instance, the Appellant has provided a copy of correspondence from South West Water which provides that the potential fall back for connection to the surface water dedicated sewer would be a logical alternative in the event that the potential soakaway was not a viable option. Whilst I acknowledge the Appellant's submissions in this regard and note that the Council's Drainage Specialist indicates that they accept that correspondence from South West Water as amounting to an agreement in principle, in my view the confirmation of the potential for a logical alternative being present does not amount to an agreement in principle. Consequently, I do not find that the maintained fall back option has been agreed.

12. Whilst I would concur that in the event that the fall back option had been shown to be agreed in principle, and that, therefore, there would be a confirmed feasible option for the disposal of surface water, a planning condition that would allow for further details of soakaway or attenuation, including details regarding the maintenance and management of any such drainage system, would be sufficient and reasonable.
13. However, in the absence of confirmation regarding the potential fall back, and given the site's location within the CDA, it would therefore be important to ensure that one of the two possible options for disposal via soakaway or attenuation would be feasible. In this instance, insufficient information has been provided that would confirm the feasibility of either of those two options.
14. Policy DEV35 of the Local Plan is specific with regards to justification of the proposed drainage options and that proposals for long term maintenance and management of the drainage system are provided. Whilst I would agree that such matters could be left to be secured by planning condition, it could only be on the basis that at least one of the options for disposal of surface water would be possible. Given that it has not been demonstrated that the fall back has been confirmed, and given the site's location within the CDA, it would be required that sufficient information is provided in support of the application that demonstrates that one of the two proposed options, via soakaway or attenuation, is feasible.
15. In view of the above, the proposal would not provide an adequate means of drainage and would therefore fail to comply with Policy DEV35 of the Local Plan which seeks to ensure that development incorporates sustainable water management measures, minimise surface water run-off, and ensure that it does not increase flood risks or impact water quality elsewhere.

Land Use

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.
17. Policy DEV10 of the Local Plan, amongst other matters, provides that housing developments should be designed to be integrated with the adjacent developments and not appear to be an unrelated addition to the rest of the town, village and neighbourhood, and that this is to be achieved in the quality of the building design, materials and layout. Policy DEV20 of the Local Plan concerns place shaping and requires that development has proper regard to the pattern of local development and the wider development context and surroundings in terms of, amongst other things, scale, visual impact and density.
18. Policy SPT1 of the Local Plan identifies a range of principles of sustainable development and SPT2 of the Local Plan details a number of principles of sustainable linked neighbourhoods and sustainable rural communities.
19. The appeal site comprises land and buildings located at the northern edge of Kingsbridge. This part of Wallingford Road and where access to the appeal scheme would be provided, is extremely narrow, restricted to a single trackway, and characterised by substantial detached dwellings set within generous plots. The eastern boundary of the site borders sloping agricultural

fields. To the south of the site and where Wallingford Road widens, the character and appearance of housing changes, with more modest attached and semi-detached housing being predominately more densely arranged when compared to housing within that narrow part of Wallingford Road where the appeal site is located.

20. The appeal proposal is for six, substantially sized, detached dwellings. The evidence before me confirms that a separate planning application¹ for the demolition and replacement of a substantial detached dwelling that occupies land associated with the appeal scheme is to be determined by the Council.
21. In terms of the pattern of local development and the wider development context and surroundings, as noted above where Wallingford Road narrows to a single trackway, the character and appearance of housing changes, with predominately more modest higher density housing giving way to more substantial detached dwellings. Whilst I acknowledge the Council's reference to the density of residential development to the south of the site at Allotment Gardens and St Marco Gardens, as I observed on my site visit there were a number of substantial detached dwellings located within those cul-de-sacs and which would reflect the density of the proposed development at the appeal site.
22. In my view, having considered the evidence and submissions before me and based on my site visit observations, by reason of the change in the character, scale and appearance of housing as Wallingford Road becomes a single track road, and given the relatively mixed density of housing close to the site, I find that the proposal respects the density and pattern of development at this locality and would not be harmful to the character or appearance of the surrounding area in this regard. In these respects, the appeal proposal would represent efficient use of land.
23. As noted above, a separate planning application for the existing dwelling known as Dennings is before the Council for determination. In this respect, even in the event that planning permission was refused and the dwelling at Dennings was to remain, by reason of the scale and density of adjacent housing, and given the variety of designs and styles of the substantial dwellings close to the site within this narrow single track section of Wallingford Road, I conclude that the proposed design and scale of the appeal scheme would not look out of place nor be harmful to the character and appearance of the area.
24. The appeal scheme would be located with convenient access to the range of facilities and services contained within Kingsbridge, and would provide a mixture of three bedroom and four bedroom houses. As such and in combination with the above factors, I find that the appeal proposal would not conflict with the provisions, aims or objectives of Policies SPT1, SPT2, DEV10 or DEV20 of the Local Plan.
25. Notwithstanding the above, planning history for the site confirms that outline planning permission² for fourteen dwellings (the Alternative Scheme) at the appeal site has previously been granted by the Council. The Council have put it to me that the Alternative Scheme, which would trigger the requirement for affordable housing provision, would provide a broader mix of housing, would

¹ Local Planning Authority Reference: 0576/21/FUL

² Local Planning Authority Reference: 2574/16/OPA

reflect housing density at this locality and, consequently, would not be as harmful as the appeal scheme.

26. It is a basic planning principle that each application must be considered on its own merits. Nonetheless, the Council refer to case law³ on whether the Alternative Scheme is a relevant material consideration in the determination of this appeal. In that regard, alternative proposals are normally irrelevant. As noted above, I have found no harm with regards to density and the efficient use of land or in respect of harmful impacts on the character or appearance of the surrounding area, and that the appeal scheme would comply with the relevant policies of the development plan in respect of those matters.
27. Notwithstanding that the Alternative Scheme is in outline, I have only relatively limited information regarding that scheme. It is noted that the appeal scheme would be likely to result in lower numbers of vehicle movements on this very narrow and constrained section of Wallingford Road when compared to the Alternative Scheme, and that the evidence before me suggests that there is a need for four bedroom and detached dwellings within Kingsbridge. For the above reasons and based on the evidence before me, I do not consider that the evidence suggests that the Alternative Scheme would not be as harmful as the appeal scheme with regards to efficient use of land and design, nor in respect of corresponding to the density and pattern of development at this locality.

Planning Obligations

28. Policy DEV4 of the Local Plan concerns playing pitches and, in relation to smaller development sites, a planning obligation will be sought to mitigate for the impact of new residents through new and improved provision of playing pitches in an appropriate location. There is also support for the provision of infrastructure to mitigate the general impacts of development from Policies DEV27, DEV30 and DEL1 of the Local Plan.
29. It is likely that future residents of the appeal scheme would use the existing play and sports facilities located within Kingsbridge, and which would add pressure to those facilities. Financial contributions would be required in order to mitigate for the additional pressures on such infrastructure, with the evidence before me indicating that, based on the occupancy rates in the Joint Local Plan Developer Contributions Evidence Base, contributions of £11,814.72 for improvements to and on-going maintenance of play facilities in Kingsbridge, and £13,143.49 for improvements to and on-going maintenance of sports facilities in Kingsbridge, would be required in relation to the proposed development.
30. When the appeal against non-determination of the planning application was made, no suitable or enforceable mechanism had been provided by the Appellant and which provided for the required infrastructure contributions. However, during the course of this appeal, the Appellant has provided copies of an executed and dated planning obligation which, it is maintained, provides the necessary and appropriate contributions towards infrastructure.
31. The Council has been provided with an opportunity to comment on the submitted planning obligation and has confirmed that the submission of the completed planning obligation during the appeal, is sufficient to overcome the

³ R (on the application of Mount Cook Land Ltd) v Westminster City Council [2003] EWCA Civ 1346

reason for refusal it would have given with regards to provision of infrastructure contributions, in the event that the appeal against non-determination had not been made.

32. I therefore conclude on this main issue, that the planning obligation is necessary to make the development acceptable in planning terms, and that the financial contributions, sought by the Council and agreed by the Appellant, would be directly related to the development proposed. Consequently, the appeal scheme would comply with the requirements of Policies DEV4, DEV27, DEV30 and DEL1 of the Local Plan.

Other Matters

33. Interested parties raise additional objections to the appeal scheme on the grounds of highway safety and impact on the living conditions of nearby residents with regards to overlooking. These are all important matters and I have taken into account all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my decision.

Planning Balance and Conclusion

34. The provision of six additional dwellings would make a limited contribution towards the supply of housing in the local area, with the local economy also having the potential to experience some limited economic benefit both during the period of construction, and through the future spend of residents within local businesses. I attach limited weight to those benefits by reason of the modest scale of the proposed development.
35. However, whilst I acknowledge the limited benefits as set out above, and have not found there to be conflict in matters related to efficient use of land or failure to correspond to the density and pattern of development at this locality, and that the appeal scheme would make adequate contributions to mitigate the infrastructural impacts of the development, I have found the proposal has not satisfactorily addressed matters related to flood risk and surface water drainage. Consequently, I have not found the development to be in accordance with the Development Plan when taken as a whole. I am satisfied that despite the limited benefits summarised above, that these would be outweighed by the adverse impact of the proposed development in relation to flood risk and surface water drainage.
36. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR