



Appeal Decision

Hearing Held on 8 March 2022

Site visit made on 9 March 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 April 2022

Appeal Ref: APP/P1133/W/21/3283080

Bovey Tracey Hospital, Mary Street, Bovey Tracey TQ13 9HE

- 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 h2Land Ltd against the decision of Teignbridge District Council.
 - The application Ref 21/00851/OUT, dated 8 April 2021, was refused by notice dated 20 August 2021.
 - The development proposed is demolition of existing hospital and construction of 4 Self & Custom build homes.
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Decision

1. The appeal is dismissed.

Application for costs

2. Applications for costs were made by both h2Land Ltd against Teignbridge District Council and by the Council against the appellant. These applications are subject of separate Decisions.

Preliminary Matters

3. The application was made in outline form with detailed access, siting, scale and appearance. Only landscaping was reserved for future consideration. I have therefore determined it on this basis.
4. The Council's Executive Committee resolved to make the Bovey Parish Neighbourhood Plan (NP) on the same date as the hearing took place. The anticipated change in the status of this document was discussed as part of the hearing and in correspondence thereafter. Consequently, I have taken account of the NP as part of the development plan in reaching my decision and no prejudice has been caused to either party.
5. Prior to the hearing, two different signed unilateral undertakings (UUs) were submitted, both containing provisions, albeit different, for the houses to be provided as self or custom-build houses, and for a secondary school transport contribution of £1,737 to be made prior to the occupation of any one of the dwellings. I return to this aspect later.

Main Issues

6. The main issues are:
 - the effects of the proposal on the character and appearance of the area, whether it would preserve the settings of nearby listed buildings and the setting of Bovey Tracey Conservation Area;

- whether the proposal would create a mixed and inclusive community, with particular regard to the provision of affordable housing;
- whether there is a need for self/custom build opportunities and if the proposal would contribute towards meeting such;
- whether there would be an effective means of surface water disposal; and
- whether the costs of providing secondary school transport would be adequately secured.

Reasons

Site Context and Heritage Significance

7. The elevated appeal site comprises two tiers and a large, disused hospital building set towards the rear boundary. It is accessed from Furzeleigh Lane, but is most apparent from Mary Street, where it features prominently above a stone boundary wall which forms part of the Bovey Tracey Conservation Area (CA). The lower tier of the site is largely an open, grassed space, bound to the front by a post-and-rail timber fence and hosts a small number of significant trees close to the roadside boundary. The higher tier, set partly behind a bank of scrubby vegetation, accommodates a two storey, rendered blockwork former hospital building and large area of tarmacked hardstanding. Due to its recessed siting, the hospital building does not appear prominent in close views from Mary Street. In longer views from Mills Marsh Park area, the elevated level of the site means that the hospital building is visible.
8. Given that the appeal site lies within close proximity of a number of listed buildings, and therefore possibly within their settings, I am required under s66(1) of the Listed Building and Conservation Areas Act 1990 (LBCAA) to pay special regard to the desirability of preserving the buildings and their settings. The CA is also a designated heritage asset, the setting of which is afforded protection under the National Planning Policy Framework (the Framework).
9. The listed buildings in the vicinity of the proposal include Cross Cottage (Grade II, list entry 1097441), the Bovey Stone (Grade II, list entry 1165795) and Nos 73, 75, 77 and 79 Mary Street (Grade II, list entry 1317147). A further terrace of dwellings at Nos 81 – 91 Mary Street has been labelled a non-designated heritage asset (NDHA) which contributes to the character and appearance of the area, the setting of which was also considered relevant.
10. The settlement of Bovey Tracey has a linear form and is situated on the slopes of Hennock Down, overlooking the River Bovey, and its historic core first flourished in the medieval period. The undulating character of roads and streets is a special quality of the CA, notably the increased height as the settlement rises away from the River. There are a range of designated listed buildings, some first constructed between C16 – C17, but others are C18 or C19 examples of vernacular architecture. From the evidence and from my own assessment, the special qualities and thus significance of the CA derives from the historic, architectural, fabric, and archaeological interest which relates to the settlement's history and function, including the designated and non-designated heritage assets.
11. The retaining stone wall beneath the appeal site is a positive feature of the designated CA. The appeal site above it forms part of the setting of the CA and contributes positively to it by providing an open and verdant space that,

together with the garden of Cross Cottage and green spaces elsewhere along Mary Street, provide the numerous positive historic buildings and important stone boundary features a deserved degree of prominence in the streetscene.

12. Grade II Cross Cottage is a two storey, double depth plan house constructed of roughcast solid walls with a double-pitched slate roof in two parallel ranges. It has a symmetrical south-east front elevation, chimney stacks to all four gables, and some internal features of interest including its open-well staircase. Its heritage significance stems from it being a fine example of C19 vernacular architecture which contributes to the understanding of the development of the settlement in this peripheral, residential area. Its setting is largely defined by its verdant gardens and stone boundary wall enclosure from Mary Street, which the house itself does not directly address. In my view, the appeal site contributes only a limited extent to the setting, and thus significance, of Cross Cottage by maintaining a degree of greenness and openness above the stone boundary wall that enables an appreciation of its roadside position and its importance as a substantial heritage asset within the CA.
13. The Bovey Stone comprises the remnants of a medieval cross and is set into the garden wall of Cross Cottage, although is understood to have been relocated from somewhere relatively nearby in early C19. Its significance lies predominantly in its physical fabric and its setting is relatively enclosed to the area immediately around it. The site is visible in the same views as the Bovey Stone but, in my view, does not contribute to its significance by more than a limited extent and in a manner similar to that of Cross Cottage.
14. Nos 73, 75, 77 and 79 Mary Street is a terrace of four, two-storey cottages that are all believed to have formed a single larger house when constructed in C16-C17s. The terraced dwellings have solid, rendered walls and pitched roofs. The varied chimney stacks are notable features and the front elevation contains a characterful variety of fenestration. Its significance primarily relates to its architectural interest as an illustrative remnant of the C16-C17 landscape with archaeological potential and surviving physical fabric. The setting of this building is formed from its immediate surroundings within Mary Street, with the NDHA to the north-west higher side of the street, a generous open space at the junction with Croker's Meadow and garden of Cross Cottage. Due to the existing undulating character of the road, the presence of built form and intervening trees, the views towards the appeal site from this listed building are restricted. Therefore, whilst there is the potential for the site and building to be experienced sequentially whilst moving along the street, the appeal site does not contribute to the setting or significance of this listed building.
15. The NDHA at No 81 – 91 Mary Street is a terrace of five two-storey dwellings constructed of locally-prevalent dolite rubble with a mix of local stone and brick window surrounds. They have pitched, slated roofs, timber casement windows and brick chimney stacks. The mid-C19 building is significant in heritage terms because of the quality of its contribution as an example of vernacular architecture, directly fronting onto Mary Street, and with elevated gardens to the rear, which add to the understanding of the area's historic development. The appeal site's current openness and trees are positive features, intervisible with the principal elevation of the NDHA, allowing an appreciation of their contribution and prominence within the immediate streetscene.

The Proposal

16. The proposal seeks permission for the demolition of the former Hospital building in its entirety and for the construction of four detached dwellings. The plans detail three detached dwellings with accommodation over three floors, set towards the back of the site with access and parking at the rear and gardens to the front. There would also be a larger, split level, two storey dwelling on the lower tier of the site, set in closer proximity to the adjacent Almshouses, which would take its access and parking from the rear and also have its main garden to the front. Landscaping is a matter reserved for future consideration.

Character, appearance and heritage impacts

17. The positive attributes of the scheme before me include the manner in which it would retain the lower stone boundary wall and significant trees above. It is also positive that the individual buildings have been designed with reference to some vernacular architectural features found within the area and also that they would incorporate locally distinctive construction materials.
18. However, the layout of the scheme would result in the rear elevations of all buildings being presented towards Mary Street, with their main gardens in front, rather than to the rear of the buildings, unlike the adjacent Almshouses and other buildings that front onto Mary Street. This would mean that what would be expected to become the more private and domesticated rear elevations and gardens, would be 'on show' and would ideally need to maintain a refined and clutter-free appearance, as the hospital site has done, and the polite front gardens of the Almshouses do, in order to continue to contribute positively to the streetscene. Whilst there appears to be a suggestion of a tree screen in front of the gardens of Plots 1 – 3, the actual space allowed between the retaining wall and gardens themselves appears unrealistically narrow relative to the height and breadth of trees that would be needed to create an effective screening measure.
19. Due to the large scale and mass of the dwellings and garages with accommodation above, combined with their siting, with priority given to two separate vehicular accesses, the scheme would fail to integrate with the tighter, historic urban form which typically orientates itself to better address the street, and would, instead, appear to be a more general, suburban form of development.
20. In respect of the scale of Plot 4, with its elongated width at 6 bays wide, it is clear that as a single dwelling it would fail to relate to the established context which typically comprises more modestly-scaled dwellings. It would read, in terms of form, orientation and proportions, as the rear of two dwellings, but with its lower, subservient element as rather squat. In addition, though I cannot assume that there would be any technical encroachment within the root protection areas, the proximity of the closest elevation to the canopies of the protected trees would also appear particularly cramped.
21. Whilst the appellant indicated that the insertion of doors to create a faux entrance/s to Plot 4 could remedy the lack of interaction with the street, I do not consider that this would be sufficient to remedy the anticipated harm. Similarly, whilst the suggestion that the individual purchasers of the plots would ultimately look to redesign the dwellings under s73 applications, I am required to consider the largely detailed scheme before me.

22. In view of the above, I find that the proposal would harm the character and appearance of the area, and would also fail to preserve the settings of the aforementioned heritage assets. Consequently, the proposal conflicts with, in particular, Policies S2 and EN5 of the Teignbridge Local Plan (2014) which seek to ensure new development is of a high quality, integrates with the character of the built and natural environment, and protects the area's heritage.
23. Whilst I do not consider that the proposal would result in harm to the significance of the Bovey Stone or Nos 73 – 79 Mary Street, I find that the proposal would be harmful to the setting of the CA. The imposing effects of the scheme and interruption to the logic of the streetscene would also incrementally harm the setting and thus significance of the Grade II Cross Cottage and NDHA at Nos 81 – 91 Mary Street.
24. Under the terms of the Framework, the harm to the significance of the heritage assets would be 'less than substantial', but nonetheless of considerable importance and weight. Such harm should be weighed against the public benefits of the proposal.

Affordable Housing

25. Local Plan Policy WE2 is consistent with the Framework specifically within the district's designated rural areas (i.e. including Bovey Tracey). It requires the provision of 30% affordable housing from 'sites that have capacity for more than 4 dwellings'. The Council have embedded this desire for optimisation into its Policy and further explained in its preamble that this allows the Council to look at whether the density or number of units in a proposal is lower than might reasonably be expected, rather than take at face value what a developer opts to submit. The application of the Policy will mean that the affordable housing target of 30% will apply to the number of dwellings by which the site capacity is considered to exceed four dwellings. So, a fifth or any higher number of dwellings (or perceived site capacity of the same order) triggers a 30% requirement for affordable housing. Policy H1 of the NP refers back to the Teignbridge Local Plan affordable housing targets and adds nothing further.
26. The appellant's Statement¹ indicates that the site can accommodate 6 dwellings, though that claim was based on the previous scheme which was refused. In the current scheme, the floor areas of the dwellings Plots 1 to 3 are between 213 and 220 sqm, with Plot 4 extending to 349 sqm. From my assessment, I am of the view that Plot 4 appears to read as two dwellings, rather than one. Whilst there is no Policy prescribing the upper scale limit for dwellings, it is clear that those proposed are substantial and that applying a more proportionate approach would result in dwellings of a more modest scale, more alike neighbouring dwellings. Though this is not an innovative design approach, in an established and sensitive built environment, it is at least a useful starting point. Furthermore, the Planning Practice Guidance uses a worked example of how to apply the vacant buildings credit (VBC) (to which I return below) and uses an average floor area of 125 sqm per dwelling, which is a reasonable scale, but is substantially exceeded by each of the dwellings proposed. These factors serve to highlight that the density of the scheme appears deliberately low.

¹ Appendix 7

27. Then there is the matter of the application of the VBC, in relation to which the Council has offered little concerning the current proposal. I see no reason why VBC should not apply to this vacant building redevelopment scheme which contains a building of an agreed 689 sqm. The Council's guidance on VBC suggests that the "*netting off of 4 dwellings is intended to improve the viability of small infill and brownfield sites and, coupled with VBC, should enable qualifying brownfield sites to be brought back into effective use*". This suggests that the application of VBC could reduce the 30% affordable housing requirement.
28. Taking the above factors into account, I regard that the proposal is unnaturally weighted towards larger house types and thus, aims to omit any provision of affordable housing. Were the VBC properly applied, it may not have resulted in a particularly onerous affordable housing requirement, or off-site contribution, because it is an incentive to redevelop brownfield sites and should help achieve viable developments. As such, whilst the extent of harm is difficult to quantify, I consider that the proposal fails to achieve a mixed and inclusive community, with particular regard to affordable housing when considered against Local Plan Policy WE2, Policy H1 of the NP and the provisions of the Framework.

Self/Custom Build Housing

29. There was general agreement between the parties as to the Council's duties under the relevant Regulations² in respect of self and custom build housing, in terms of maintaining a register of individuals seeking to acquire a suitable plot and the demand for such when exercising certain planning and housing functions. The evidence suggests that self/custom build opportunities are desired, and three bedroom dwellings appeared to be in greatest demand.
30. There was, however, disagreement between the parties on the number of planning permissions granted for self/custom build dwellings against the demand. The Council offered a best-case scenario of a surplus of 144 dwellings against the target of 340 which should have been met by October 2021. The contingent position was that if the permissions accrued in Base Period 1 were excluded, there would only be a surplus of 74 dwellings. The appellant offers a figure of 299 dwellings against the target of 340 as a best-case scenario, i.e. a deficit of 41 dwellings, but also highlighted that 520 permissions would be needed by October 2022 (i.e. 180 extra to the target of 340).
31. Policy WE7 of the Local Plan requires a 5% provision of self and custom build plots from schemes of more than 20 dwellings, subject to other criteria. No other policy of the Local Plan requires the provision of self or custom build dwellings from smaller windfall sites where the principle of development is not in dispute. The scheme is for the redevelopment of a brownfield windfall site, and the principle of development does not appear to be in dispute between the parties in this case. As the scheme is not a major development to which Policy WE7 applies, there is no Policy trigger for requiring the self/custom build obligations offered in this case.
32. Both versions of the submitted UU contain conditionality clauses at 3.2, otherwise known as 'blue pencil clauses'. These specify that each obligation is conditional on me finding that it meets the tests for obligations set out in the

² Self-build and Custom Housebuilding Act 2015 (as amended) and the associated Self-build and Custom Housebuilding Regulations 2016

CIL Regulations³ and the Framework, i.e. that the obligation is necessary to make the development acceptable in planning terms, directly related to the development and fairly related to it in scale and kind. There is essentially no reason why the scheme could not come forward as an open market scheme⁴ and thus, the obligations are not necessary. In contrast, in the appeal cases put forward by the appellant⁵, non-compliance with the spatial strategies of those development plans was outweighed by those schemes comprising self/custom builds and, thus, the obligations were necessary to make them acceptable. They are therefore distinguishable from the scheme before me.

33. I heard that there may be commercial drivers to promote self/custom build schemes to maximise cashflow, or offer the certainty of CIL exemption to prospective purchasers, but these factors are not considerations of relevance to this appeal. The question as to whether an outline permission which fixes the siting, scale and appearance of dwellings could truly be considered a self/custom build scheme was also raised. The appellant indicated that the terms of the UU obligations could be complied with, as initial owners could use the s73 condition variation route to secure alternative planning permissions. However, this is of little comfort that the obligations would be directly related to the development before me, which does not appear to strictly conform to the first principles of self/custom build, being promoted by a single developer with a number of off-plan house types specified and for which an inflexible permission is sought.
34. Consequently, whilst there may be a need for self/custom build opportunities, the proposal is not obligated or capable of contributing towards meeting such when considered in the context of Local Plan Policy WE7 or the CIL Regulations.

Surface Water Drainage

35. The existing site is previously developed, although the extent of coverage of the hospital building and tarmac hardstanding is less than the whole area, and there is a large green space on the lower site frontage. It is also a site which is constrained by proximity to neighbouring dwellings, topography, retaining features and trees.
36. Local Plan Policy EN4 requires that in consideration of development proposals, regard be had to the adequacy of existing drainage, the need for surface water drainage systems separate from foul drainage systems and the use of sustainable drainage systems where ground conditions are appropriate.
37. The original reason for refusal was based on a complete absence of detail in relation to means of surface water drainage. As a means to address this, the appeal was submitted with a Drainage Strategy (September 2021). Following a review, it was concluded that there was still insufficient information to ensure that flood risks were not increased by the development. This is largely because the Drainage Strategy refers simply to the use of permeable hardsurfacing and soakaways using an assumed infiltration rate, rather than an infiltration rate derived from on-site testing. There is no agreement from the drainage undertaker to discharge a restricted rate of attenuated flows to a combined

³ The Community Infrastructure Levy Regulations 2010, as amended

⁴ With affordable housing component, where relevant

⁵ Appeal Refs: APP/G2435/W/18/3214451 dated 25 June 2019 and APP/H1840/W/19/3241879 dated 23 July 2020

sewer or similar should the use of soakaways not prove viable. In short, only one solution is presented as a betterment compared to the existing scenario.

38. I am also of the view that the information required at the outline planning stage, irrespective of the current low risk of surface water flooding, is not particularly onerous. In the interests of ensuring a workable drainage solution, even a high level drainage strategy needs to be based on useful site-specific information. As such, I do not consider the evidence before me meets the Policy requirement and cannot assume the suggested conditions would be certain to avoid potential harms in this regard. The proposal would not, therefore, be provided with an effective means of surface water disposal, contrary to the requirements of Local Plan Policy EN4.

Secondary School Transport

39. There is no disagreement between the parties that the development would result in a pupil needing to be transported to the nearest secondary school. The method of calculation, resulting in a total of £1,727, has not been disputed.
40. The submitted UUs both provide for a 'Secondary School Transport Contribution' for the specified amount. Devon County Council, to which the contribution would be paid, have indicated a preference for the wording to include reference to how specifically the secondary school transport contribution would be used, i.e. between the site and South Dartmoor College.
41. To my mind, it is fairly clear that the contribution is to be used for secondary school transport. I find that the contribution would be necessary to make the development acceptable in planning terms but do not consider the UUs to be so ambiguous that they would fail to mitigate the anticipated harm or conflict with Policies S1, S1A or S9 of the Local Plan. As the appeal is failing for other reasons anyway, this matter is not decisive.

Other Matters

42. The existing roof space was identified as previously having been used by bats, although an Ecological Appraisal Update report (Reports4Planning, March 2022) appears to indicate that there has not been any use by bats more recently than the last survey undertaken in 2020. Whether there would be a need for the derogation tests to be undertaken was not explicitly clear from the evidence provided by either party, but this is not a decisive factor in any event.
43. I am aware that Torbay and South Devon NHS Foundation Trust would be the recipient of money from the sale of the site. However, in the absence of evidence as to how such would be used, I cannot assume that any health-related wider public benefits would be certain to follow from this transaction.

Planning Balance and Conclusion

44. Though the scheme would mitigate the increased demand for secondary school transport, in each other respect identified above, the proposal would conflict with the development plan, when read as a whole.
45. The public benefits of the scheme include the reuse of a previously developed well-located site, the contribution of four dwellings to the local housing stock and associated economic benefits from their construction and subsequent occupation by economically-active residents.

46. However, taken together, these benefits do not outweigh the less than substantial harm to heritage assets and nor do they indicate that a decision should be taken other than in accordance with the development plan.

47. The appeal is, therefore, dismissed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Neil Pearce	Avon Planning
Mr Paul White	Ecus Ltd
Mr Chris Hughes	h2 Land Ltd
Mr Mark Donald	h2 Land Ltd
Mr Daniel Swan	h2 Land Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gary Crawford	Teignbridge District Council
Mr Charles Acland	Teignbridge District Council
Mr John Douglass	Teignbridge District Council
Mr Richard Rainbow	Teignbridge District Council
Ms Gwen Debeckley	Teignbridge District Council
Ms Helen Williams	Teignbridge District Council
Ms Naomi Archer	Teignbridge District Council