



Appeal Decision

Site visit made on 19 July 2022

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

an Inspector appointed by the Secretary of State

Decision date: 10 August 2022

Appeal Ref: APP/Y1138/W/21/3283361

Allotments, Tumbling Field Lane, Tiverton, Devon

- 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 LiveWest Homes Limited against the decision of Mid Devon District Council.
 - The application Ref 20/01263/MFUL, dated 29 July 2020, was refused by notice dated 24 June 2021.
 - The development proposed is the erection of 22 dwellings with parking, landscaping and construction of new access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 22 dwellings with parking, landscaping and construction of new access at Allotments, Tumbling Field Lane, Tiverton, Devon, in accordance with the terms of the application Ref:20/01263/MFUL, dated 29 July 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by LiveWest Homes Limited against Mid Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. In the interests of consistency and accuracy, I have in the banner heading above used the site address and description of development as included on the Decision Notice.
4. The development plan comprises the Mid Devon Local Plan 2013-2033 (the Local Plan), adopted July 2020.

Main Issues

5. Although the Council has given two reasons for refusal on its decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify a single main issue.
6. Accordingly, the main issue in this appeal is the suitability of the appeal site for the proposed development having regard to local and national planning policy for the supply of housing and the effect of the proposed development on the character and appearance of the area.

Reasons

7. The appeal site comprises land located at the southern edge of Tiverton, and adjacent to residential development positioned to the west of the site. The main parties agree that the site is located adjacent to and outside of the settlement boundary for Tiverton.
8. The supporting text to Policy S14 of the Local Plan, which concerns the Countryside, confirms that in the context of that policy 'countryside' is defined as being land outside of the settlement limits of a number of named towns and villages. As noted above, the main parties agree that the site is located outside the settlement limits of Tiverton, being the settlement named in Policy S10 of the Local Plan and, consequently, the appeal site is located within the countryside for planning purposes.
9. Policy S14 of the Local Plan confirms that development outside of settlements, including Tiverton as named under Policy S10 of the Local Plan, will preserve and where possible enhance the character, appearance and biodiversity of the countryside and that detailed development management policies will permit agricultural and other appropriate rural uses subject to a number of criteria which, amongst other matters, includes provision of affordable and low cost housing to meet local needs. The supporting text of this policy further confirms that in order to facilitate the provision of affordable and low cost housing in rural areas across Mid Devon, rural exceptions sites will be considered in line with Policy DM6 of the Local Plan.
10. Policy DM6 of the Local Plan concerns rural exceptions sites, with its supporting text reinforcing that exceptions can be made to the normal restrictions on housing development outside defined settlements in order to encourage delivery of affordable housing. Amongst other matters, that policy confirms that developments comprising predominately affordable housing to meet local needs will be permitted, and provides that the inclusion of a proportion of market housing within exception sites will be permitted where the proportion of market housing will be less than the provision of affordable or low-cost housing and the market housing will be at the lowest level necessary to ensure that the development is deliverable.
11. The appeal scheme is for twenty two dwellings, twelve of which would be affordable housing to be secured by a planning obligation. Following submission of an Affordable Housing Statement, the Council agree that there is a demonstrable local housing need in the area. Furthermore, it is not disputed by the Council that the proposed development satisfies the requirement within Policy DM6 of the Local Plan that the scheme provides a greater number of units of affordable housing than open market dwellings and that, following independent assessment of the viability of the proposed scheme, the Council agrees it has been demonstrated that the open market housing element would be at the lowest level necessary to ensure that the development is deliverable.
12. Notwithstanding the above, the Council have referred me to criterion c) of Policy DM6 of the Local Plan which provides that development would be permitted where the site adjoins a settlement and is in a suitable location which takes account of the potential for any visual impact and other relevant planning issues. The supporting commentary of that policy further states that "Exception sites must adjoin a settlement, which for the purposes of this policy will usually mean one of the settlements defined as suitable for limited

- development in Policy S13". In that regard, the Council maintains that the appeal scheme would conflict with criterion c) of Policy DM6 in that Tiverton is not a settlement named within Policy S13 of the Local Plan and that the proposal would have an adverse visual impact on the surrounding area.
13. Whilst I note the Council's submissions in respect of the settlements named within Policy S13 of the Local Plan, it is clear from the wording of Policy DM6 that exception sites are not solely restricted to land that is adjacent to just those named settlements and does not preclude such sites being considered in locations adjacent to other settlements within the district, such as at Tiverton.
 14. As such and in combination with the above requirements to be secured by planning obligation, I conclude that the proposal would not conflict with criteria a), b), d) or e) of Policy DM6 of the Local Plan. Furthermore, in terms of its location, the proposed development would comply with criterion c) of Policy DM6 of the Local Plan being a site that adjoins a settlement.
 15. Both reasons for refusal given by the Council in their Decision Notice refers to the effect of the proposed development on the character and appearance of the area. As noted above, criterion c) of Policy DM6 of the Local Plan also requires that development takes account of the potential for any visual impact, and that that reflects the provisions of Policy S14 of the Local Plan with regards to development in such locations to preserve and where possible enhance the character and appearance of the area.
 16. Furthermore, the Council have also referred me to Policy S10 of the Local Plan which, as described above, concerns Tiverton. There is dispute between the main parties as to whether Policy S10 of the Local Plan applies to the appeal scheme given that it has been agreed that the appeal site is located outside of that settlement.
 17. In the event that Policy S10 of the Local Plan applies, given the location of the site, it is apparent that the appeal scheme would contribute to the vitality and viability of Tiverton through the construction of housing to include affordable housing and through the spend of future occupants within local businesses which, in turn, would help enhance the visitor role of the town and surrounding area. There is no substantive evidence before me which indicates that development of the site would adversely affect Tidcombe Fen, or that, subject to planning conditions, the proposal would increase flood risk. Furthermore, by reason of its location within walking distance of the services contained within the town centre, the scheme would enhance walking and cycling opportunities and bus services around the town.
 18. Nonetheless, Policy S10 of the Local Plan also indicates that proposals will provide for approximately 2,358 dwellings, of which 660 will be affordable, and 29,400 gross square metres of commercial floor space over the plan period, and that development retains the green setting provided by the steep open hillsides, particularly to the west and south of the town.
 19. In terms of numbers of dwellings, including affordable housing, over the plan period, the text to the Policy is clear that an approximate number of such units will be provided. As such the figures provided in Policy S10 of the Local Plan are indicative and do not set a cap or an absolute limit on the delivery of housing.

20. As noted above, the appeal site is located on land at the southern edge of Tiverton. However, the site is positioned close to the valley floor and whilst the site does have a slight gradient, it cannot be said to be steeply sloping. The character and appearance of the proposed units in terms of scale, density and design would reflect that of the adjacent housing and development of this relatively small site would be seen in the context of that adjacent housing within Tiverton.
21. On my site visit, I saw that the site was well screened from views from within Tiverton, including from the Tiverton Conservation Area, and the wider surrounding area, by mature vegetation and nearby housing. In that regard, whilst there would be a change to the appearance of the site by the development, I do not find that it would have a harmful effect on the character and appearance of the area, nor would conflict with the aims of criterion c) of Policy S10 of the Local Plan. In that respect, the proposal would also accord with Policy S14 of the Local Plan with regards to preserving the character and appearance of the countryside.
22. The proposal would provide benefits in terms of the provision of housing including contribution towards meeting an identified need for affordable housing, thereby assisting with the Government's objective to boost the supply of housing. The proposed dwellings would be located within convenient distance to services and facilities contained within Tiverton, with future residents contributing to the vitality and viability of the town.
23. For the above reasons, I conclude that the appeal proposal would not be harmful to the character and appearance of the area and would comply with the development plan's rural exceptions sites policy. Consequently, the appeal scheme does not conflict with the requirements of Policies S14 and DM6 of the Local Plan. Furthermore, the appeal scheme would not fail to accord with the provisions, aims or objectives of Policy S10 of the Local Plan.

Other Matters

24. Natural England have confirmed that the appeal site is located outside of the Somerset Levels and Moors Special Protection Area and Ramsar site catchment area. Consequently, no further assessment with regards to those habitat sites is required.
25. Interested parties raise additional concerns with regards the appeal scheme, on the grounds of the historic environment, ecology, lighting, impact on existing facilities, traffic, flooding and anti-social behaviour. With regards to anti-social or unsocial behaviour by any future occupants, there is no evidence before me to indicate that this proposal alone, or indeed in combination with other schemes, would give rise to anti-social behaviour, and there are measures outside of planning controls available to tackle criminal and disruptive behaviour. Furthermore, noise and disturbance from construction is to be controlled via a construction environmental management plan to be secured by condition as described below.
26. In terms of the impact on the historic environment, it is noted that the appeal site is located close to Cranmore Castle, an Iron Age hillfort and Scheduled Monument. Based on the evidence before me and following submission of an archaeology report, and consistent with the Devon County Historic Environment team, I am satisfied that the significance of Cranmore Castle would be

preserved. Whilst I have had regard to the statutory duty contained within Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, for the reasons given above, I do not find that the proposal would affect the setting of the Tiverton Conservation Area.

27. With regards to flood risk, the planning application was supported by a flood risk assessment, which recommended a ground attenuation structure and swale designed to cater for a one in one hundred year storm event, with allowance for climate change. Subject to appropriate conditions described below, I am satisfied that the proposal would not be likely to increase flood risk. In terms of impact on services, facilities and infrastructure, additional residents at a site with convenient access to the town would contribute to vitality of Tiverton and, subject to the agreed planning obligation, the appeal scheme would provide financial contributions towards open space and education facilities.
28. In respect of concerns regarding ecology and biodiversity, an ecological appraisal was submitted in support of the application, and which identified the impacts of the appeal scheme with a set of recommendations to mitigate harm and to provide enhancement. Subject to conditions which required implementation of the recommendations, such as a lighting strategy, and mitigation measures, I find no harm in relation to ecological or biodiversity matters.
29. In terms of impact of traffic and highway safety, I have noted the comments from local residents. However, the proposed development includes sufficient provision of parking spaces and would provide suitable visibility for vehicles emerging from the site. The additional traffic generated by this relatively small scheme would not be significant and would not have a severe impact on the road network, with traffic associated with the construction of the scheme being controlled by a construction environmental management plan to be approved by the Council.

Conditions

30. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the National Planning Policy Framework. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
31. It is important that the construction process takes place without significant detriment to the living conditions of existing or future residents, the operation of the highway network and the environment. Accordingly, pre-commencement conditions are necessary to require the submission of a Construction Environmental Management Plan and Waste Audit Statement. Further conditions requiring provision of refuse storage facilities, parking and street furniture are reasonable and necessary.
32. Conditions that require details of the proposed use of external materials and landscaping be provided to and agreed by the Council are reasonable to ensure that the scheme does not adversely affect the character and appearance of the area.

33. A condition that the development be carried out in accordance with a detailed drainage design, and that a Flood Warning and Evacuation Plan be submitted and approved, are necessary in the interests of managing flood risk. In order to ensure no adverse effect on biodiversity and trees, conditions that control external lighting, that the proposed development accord with the recommendations of the ecological appraisal, and that tree protection fencing details have been approved, are necessary. In the interests of public health and the environment, it is reasonable to include conditions requiring investigation and remediation of potential contaminated land.
34. Where necessary, and also in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. The wording of pre-commencement conditions have been agreed by the Appellant.

Conclusion

35. For the reasons given above, the appeal succeeds and planning permission is granted subject to the conditions identified.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin before the expiry of three years from the date of this permission.
2. The development hereby approved shall in all respects accord strictly with drawing numbers: Planning Statement, Affordable housing Statement, Site Location Plan P1747:01, Proposed Block Plan P1747:02, Ground Floor Block Plan P1747:03, Access and Movement Strategy P1747:05, Cycle, Car and Refuse Strategy P1747:06, Open Space P1747:07, House Types P1747:22, Site Constraints Plan 19026-003, Highways Layout 19026-110, Access Surface Treatment 19026-126, Swept Path Analysis 19026-130 Rev A, Highways Long Sections 19026-170, Tree Report, Design and Access Statement, Waste Statement, Wildlife Survey, Landscape and Visual Impact Assessment and Travel Assessment received by the Local Planning Authority on 3 August 2020 and drawing number: Drainage Strategy 19026-200 Rev C received by the Local Planning Authority on 12 October 2020 and drawing number: Phase 1 Desk Study and Phase 2 Preliminary Ground Investigation received by the Local Planning Authority on 13 October 2020 and drawing numbers: House Types 1747-21 Rev A and Car Charging and Accessible Homes P1747:10 received by the Local Planning Authority on 18 November 2020 and drawing number: Accommodation P1747:08 Rev A received by the Local Planning Authority on 14 January 2021 and drawing numbers: Evacuation Routes SK009 and Flood Risk Assessment received by the Local Planning Authority on 17 February 2021 and drawing number: House Types 1747:20 Rev A received by the Local Planning Authority on 23 March 2021.
3. Prior to the commencement of development, a scheme and strategy for the translocation of reptiles at the site shall be submitted to an approved in writing by the Local Planning Authority. The translocation shall be carried out in accordance with the approved details and the area proposed for development should be isolated using temporary reptile fencing and artificial refugia placed around the site. Capture and translocation should continue until five consecutive inspections of artificial refugia under suitable weather conditions find no reptiles present. Translocation would need to be carried out between April and October when reptiles are active.
4. No materials shall be brought onto any part of the site or any development commenced, until the developer has erected tree protective fencing around all trees, hedges or shrubs to be retained on that part of the site, in accordance with a plan that shall previously have been submitted to and approved in writing by the Local Planning Authority. The fencing shall be in accordance with Figure 2 of BS 5837 2012. The developer shall maintain such fences to the satisfaction of the Local Planning Authority until all development has been completed. The level of the land within the fenced areas shall not be altered without the prior written consent of the Local Planning Authority. No materials shall be stored within the fenced area, nor shall trenches for service runs or any other excavations take place within the fenced area except by written permission of the Local Planning Authority.

5. Prior to installation of any external lighting, including street lighting and lighting on and around buildings and public spaces, a phase specific lighting strategy shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter proceed and be retained in accordance with the lighting strategy.
6. Within 3 months of commencement of development of the development hereby approved, a scheme for the provision of integrated bat and bird boxes shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter proceed and be retained in accordance with the agreed scheme.
7. Prior to the commencement of development, a Waste Audit Statement shall be submitted to and approved in writing by the Local Planning Authority. The statement shall include:
 - a) Methods to reduce the amount of waste material
 - b) Methods to re-use the waste within the development
 - c) Methods for the reprocessing and/or final disposal of excavated materials, including locations (which should hold appropriate planning permission, Environment Agency licences and exemptions) where such activities will take place
 - d) Estimated quantities of excavated/demolition materials arising from the site
 - e) Evidence that all alternative methods of waste disposal have been considered
 - f) Evidence that the distance travelled when transporting waste material to its final disposal point has been kept to a minimum
 - g) The amount of construction, demolition and excavation waste in tonnes.
 - h) Further information on the type of material the waste will arise from during construction, demolition and excavation.
 - i) Identify in more detail targets for the re-use, recycling and recovery for each waste type during construction, demolition and excavation of the development
 - j) The predicted annual amount of waste (in tonnes) that will be generated once the development is occupied.
 - k) Identify the main types of waste generated when development is occupied (If possible)
 - l) Provide further detail of the waste disposal method including the name and location of the waste disposal site.

The development shall thereafter proceed in accordance with the approved Waste Audit Statement.

8. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Environmental Management Plan (CEMP). The plan will identify the steps and procedures that will be implemented to minimise the creation and impact of noise, vibration, dust

and waste disposal resulting from the site preparation, groundwork and construction phases of the development and manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways. The plan must include:

- (a) the timetable of the works;
- (b) daily hours of construction;
- (c) any road closure;
- (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
- (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
- (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
- (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

Once approved the CEMP shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

9. The proposed estate road, cycleways, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins, For this purpose, plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
10. Prior to the occupation of the units hereby approved a Flood Warning and Evacuation Plan shall be submitted to and approved in writing by the Local Planning Authority.

11.No other part of the development hereby approved shall be commenced until the proposed access road and retaining structure details have been submitted to, and approved in writing by, the Local Planning Authority and will thereafter be retained for that purpose at all times.

12.Land Contamination:

- (a) Before the development hereby approved is commenced, a site investigation and risk assessment shall be carried out to determine the nature and extent of land contamination that may be present and the likely impact on all receptors that may result. A full report of the investigation and risk assessment shall be forwarded to the Local Planning Authority for approval. No work shall proceed on site until either the Local Planning Authority grants written consent for the development to commence or the requirements of (b) below are met.
- (b) Where actual or probable significant pollutant linkages are found following the investigation and risk assessment required by (a) above, the applicant shall submit a remediation statement together with a timescale for completion of the required works for approval in writing by the Local Planning Authority.
- (c) Following completion of any works required by condition (b) above, a remediation validation report shall be submitted to the Local Planning Authority for approval in writing. Occupation on the site, or parts of the site affected by land contamination, shall not take place until approval of the validation report has been granted.

13.No development hereby permitted shall commence until the following information has been submitted to and approved in writing by the Local Planning Authority:

- (a) A detailed drainage design based upon the approved Flood Risk Assessment - Reference 19026 dated October 2020, and Drainage Strategy - Drawing Number 200 Revision C.
- (b) Detailed proposals for the management of surface water and silt runoff from the site during construction of the development hereby permitted.
- (c) Proposals for the adoption and maintenance of the permanent surface water drainage system.
- (d) A detailed assessment of the condition and capacity of any existing land drainage system that will be affected by the proposals. The assessment should identify and commit to, any repair and/or improvement works to secure the proper function of the surface water drainage receptor.
- (e) Evidence there is agreement in principle from the landowner to connect into their system No building hereby permitted shall be occupied until the works have been approved and implemented in accordance with the details under (a) - (e) above.

The development will thereafter proceed in accordance with the submitted and approved details.

14. The development hereby approved shall be undertaken in strict accordance with the mitigation measures detailed within the approved Ecological Report by Richard Green dated December 2019.
15. The development shall not be occupied until refuse/bin storage facilities have been provided in accordance with the details hereby approved.
16. Notwithstanding the details shown on the approved plans, the development shall not be carried out otherwise than in strict accordance with drawings to be submitted to and approved in writing by the Local Planning Authority, prior to the commencement of the development, showing all external architectural details including details of window and door reveals; rainwater goods; eaves and soffits; mouldings.
17. The development shall not be carried out otherwise than in strict accordance with the details of the finished floor levels of the dwellings which shall have been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development.
18. The development shall not commence until full details of hard and soft landscape works, including an implementation and management plan, have been submitted to and approved in writing by the Local Planning Authority. Details of soft landscape works shall include retention of any existing trees and hedges; finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. The hard landscape works shall include means of enclosure; boundary and surface treatments; vehicle and pedestrian/cyclist circulation; proposed and existing service lines. All works shall be carried out in accordance with the approved details and the implementation plan and thereafter maintained in accordance with the approved management plan.
19. Parking facilities shall be provided and thereafter permanently retained for the parking of vehicles in accordance with the approved plans prior to occupation of the dwellings hereby approved.
20. Notwithstanding the submitted details, 10 dormouse nest boxes will be installed in the retained south and east hedge, to increase the carrying capacity of the hedges for dormice prior to occupation of the dwellings hereby approved.
21. Prior to their use on any dwelling hereby approved, samples or details of the materials to be used on the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The work shall proceed in accordance with the approved materials.