



Appeal Decision

Site visit made on 28 July 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2022

Appeal Ref: APP/Q1153/W/21/3283705

Field Adjacent to Woolacombe Road, Bere Alston PL20 7HH

- 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 Mr Steve Billings of Burrington Estates Ltd against the decision of West Devon Borough Council.
 - The application Ref 3424/19/FUL, dated 15 October 2019, was refused by notice dated 14 April 2021.
 - The development proposed is for 31no. new dwellings and associated access road and pedestrian link.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form proposed the erection of 37 dwellings and associated access road, plus pedestrian link to end of Down View adjacent. However, during the course of the planning application, the proposal was revised to 31 dwellings. As such, I have proceeded on the basis of the revised description in the banner heading above, taken from the Decision Notice.

Main Issue

3. The main issue in this appeal is whether the proposed access is in a suitable location having regard to relevant development plan policies.

Reasons

4. There is no dispute between the appellant and the Council regarding the principle of residential development on the site. Indeed, the site is allocated for residential development in the Plymouth and South West Devon Joint Local Plan adopted by West Devon District Council on 26 March 2019 (JLP) and the Neighbourhood Plan for Bere Peninsula to 2034 made on 17 October 2018 (NP). The Council's sole reason for refusal relates to the location of the vehicular access into the site.
5. The appeal site is located between two roads. The B3257 road to Tavistock runs along the northern boundary of the site and also provides access to the adjacent bowling club. Woolacombe Road runs along the southern boundary of the site. Both boundaries of the site with the respective roads consist of native hedgerow planting.
6. Policy H2 of the NP identifies the appeal site as being one of the most suitable, available and achievable alternatives for housing development to meet local

housing needs. In acknowledging the sites location in the Tamar Valley Area of Outstanding Natural Beauty (AONB), the policy requires proposals to be accompanied by a Landscape and Visual Impact Assessment (LVIA). It also states that proposals must have regard to its requirements which include that the preferred site access should be onto the B3257 but that if this doesn't prove feasible, an alternative access onto Woolacombe Road would be acceptable.

7. Policy T3 of the NP refers to the development of the appeal site resulting in the creation of a Bere Alston Gateway. It states that any proposals for residential development at the appeal site should consider incorporating a new combined access junction onto the B3257 with the bowling club but that if this does not prove feasible, an alternative access onto Woolacombe Road would be acceptable.
8. Taken together, there is a clear preference in the NP for the access to the appeal site to be from the B3257. However, both policies refer to an access from Woolacombe Road being acceptable where this is not feasible.
9. There is no suggestion from the Council that the proposed access onto Woolacombe Road is unsafe. In this respect, I find no conflict with Policy DEV29 of the Plymouth and South West Devon Joint Local Plan adopted by West Devon District Council on 26 March 2019 (JLP) and the Framework insofar as they require safe and satisfactory traffic movements on sites and within the wider transport network.
10. The main issue in respect of this appeal rests with the word 'feasible' in Policies H2 and T3 of the NP. Neither policy nor their supporting text sets out what information would be required to demonstrate that feasibility. The appellant suggests that when 'read sensibly' the policies express no more than a preference for an access from the B3257 and that where there are good reasons for choosing a different access, the policies are sufficiently flexible to allow development to proceed¹. The Council have referred to the ordinary meaning of the word according to the Oxford English Dictionary. That is, 'capable of being done, accomplished or carried out; possible and practicable'.
11. From my reading of the policies and in the context of this appeal, I consider that feasible is more than just allowing a choice to be made. It requires that something is fully investigated to ascertain whether it could be achieved. There is a sensible inbuilt level of flexibility in the policies which would allow the allocated housing site to come forward for development but not before it has been demonstrated that pursuing an access onto the B3257 was not possible. For this reason, I have considered the appeal in the context of the definition of feasible put forward by the Council.
12. There is a statutory duty under Section 85 of the Countryside and Rights of Way Act 2000 to conserve and enhance the natural beauty of the AONB. It is clear from reading policies H2 and T3, that the NP was made in the full knowledge of the sensitivity of the site in landscape and visual impact terms and acknowledges that the development of the site will have some impact on the AONB.

¹ Para 8 of the appellants final comments

13. The submitted LVIA assesses the impact of the proposed development with a new access from Woolacombe Road to the south. However, the appeal is not accompanied by an assessment which clearly demonstrates that an access to the north would result in an unacceptable landscape impact. Instead, assumptions have been made about the potential visual impact and effects on the landscape of a development served by an access from the B3257 ². The AONB Management Body ³ have advised that they could not support an access from the B3257. They refer to the screening provided by the current hedge and the urbanising impact of an access with its associated visibility splay.
14. A new access on the northern boundary would result in the loss of the hedge along the B3257. The existing hedge is semi-mature with relatively low-level planting and is devoid of trees. As such, the appellant's Landscape Strategy proposes enhancement of the whole length of the hedge with native hedgerow planting to include trees. This will take time to establish and as such I am not persuaded that removal and replacement of the hedge to provide an access would be so significantly different as to render the proposal not feasible. In addition, the presence of the bowling club access and visibility splay on the adjacent site already urbanises the approach to the settlement from the east and as such I am not satisfied that the provision of an access into the appeal site would further erode its character to an unacceptable degree.
15. In the absence of an assessment which indicates otherwise, I am not persuaded that the development of the site with an access from the B3257 would not be feasible in terms of its design, layout nor that it could not be landscaped such as to conserve the natural beauty of the AONB.
16. Equally, I am not persuaded that the presence of the public right of way crossing the site or the location of the open space represents a barrier to the provision of an access from the northern boundary. The appellant advises that the route of the footpath has been the subject of a separate application to slightly amend its route and that this is now ready to be confirmed subject to the grant of planning permission ⁴. This does not suggest that the internal layout of the site is constrained by the route of the existing footpath.
17. The appellant's Highways and Traffic Evidence dated 24 September 2021 refers to the need for third party land to provide the required visibility splays and to undertake road widening. However, in respect of this latter point paragraph 6.28 acknowledges that this is not something which has been requested by the Highway Authority. The need for an agreement with third parties was acknowledged in Policy T3 which seeks a combined access with the bowling club. In addition, I have nothing before me which suggests that agreement could not be reached with neighbouring landowners or that it would not be technically possible to realise the aspirations of the community in the NP for an access from the B3257 and the provision of a Bere Alston Gateway. As such, it does not represent a barrier to the development taking place.
18. The appellant alleges that the policies are sufficiently flexible to allow the appeal development to be carried out, drawing on the words 'preference' and 'if feasible'. However, the intention of the policies are clear. Flexibility exists in

² Para 5.4.2 of the Hearing Statement: Landscape and Visual Issues dated August 2021

³ In the email from the AONB Planning Advice Officer dated 16 March 2021 contained in appendix 14 of the appellant's statement of case.

⁴ Paragraph 2.17 of the Appellant's Statement of Case dated September 2021

situations where it has been demonstrated that the access onto the B3257 is not feasible. There is no suggestion that the policies are offering up an 'either/or' approach to the point of access or that the 'preference' established should be set aside in the absence of compelling evidence that this would not be feasible.

19. Therefore, in the absence of substantive evidence that an access from the B3257 is not feasible, I find that the proposal is contrary to Policies H2 and T3 of the NP, the requirements of which are set out above.

Other Matters and Planning Balance

20. Allowing the appeal would result in the provision of thirty one new homes with a range of sizes, tenure and types. A Unilateral Undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 has been signed by the appellant and, amongst other things, would secure nine affordable dwellings on the site. This would boost the supply of housing, particularly for those with a specific housing requirement for affordable and accessible homes as required by paragraph 60 of the National Planning Policy Framework (the Framework) as well as supporting the vitality of the rural community (paragraph 79).
21. The appeal proposal being a small or medium size development could also be built out relatively quickly as set out in paragraph 69 of the Framework and would provide on-site open space and play facilities. In addition, there would be additional landscaping on-site and the resultant biodiversity net gains. The appellant also refers to the use of sustainable construction methods and the installation of renewable energy technology in the dwellings. These are all benefits of the proposal.
22. However, these benefits would still be realised with a development served by an access from the B3257. Dismissing this appeal would not prevent the development of housing on the site from coming forward as nothing before me suggests that developing the site with an access from the B3257 would not be achievable. The identified benefits would still be realised with a policy compliant scheme with access from the B3257. In addition, the Council has a greater than five-year housing land supply and this has not been disputed by the appellant. I accept that the five-year housing land supply does not prevent further housing from coming forward but it does limit the weight I attribute to it. In this context, I give these benefits moderate weight.
23. The UU would provide financial contributions towards education, off-site play and sports facilities, the SAC and a Traffic Regulation Order to move the 30mph speed limit together with affordable housing provisions. With the exception of affordable housing which I have considered above, these are all designed to mitigate the impacts of development and are therefore neutral in my consideration of the appeal.
24. The proposed access onto Woolacombe Road would be safe and satisfactory in terms of its impact on the wider highway network and the Council have identified that the proposal is acceptable in all other respects such as design, the impact on the AONB, biodiversity and outdoor amenity standards such that it complies with Policies DEV23 and DEV25 which seek to protect landscape character and visual quality. However, a lack of harm in these respects are neutral factors in the planning balance and thus weigh neither for, nor against

the development. Moreover, they do not justify allowing a proposal that is in conflict with the development plan.

25. The appeal site lies within the Zone of Influence of the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and the Tamar Estuaries Complex Special Protection Area (SPA). In the event that the appeal is dismissed, an appropriate assessment under Regulation 63 of the Habitats Regulations 2017 in terms of the impact of the proposal on the SAC and SPA would not be required.
26. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The proposal would accord with a number of policies in the development plan in terms of the provision of housing and the need to protect landscape character. However, in the absence of compelling and substantive evidence that the provision of an access onto the B3257 is not capable of being done, accomplished or carried out, possible and practicable, I have found that the appeal proposal is in conflict with the development plan. I have considered the benefits put forward by the appellant but am not persuaded that the appeal should be determined other than in accordance with the development plan. Paragraph 29 of the Framework sets out that Neighbourhood Plans give communities the power to develop a shared vision for their area. To allow the appeal would undermine the approach that the planning system should be genuinely plan-led.
27. A number of other concerns have been raised by interested parties. However, as I am dismissing the appeal it is not necessary for me to consider these further.

Conclusion

28. Taken together, the proposal is contrary to the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is dismissed.

Alison Fish

INSPECTOR