



Appeal Decision

Site visit made on 3 October 2022

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 18th November 2022.

Appeal Ref: APP/P1133/W/21/3286897

Land adjacent to Hill Drive, Secmaton Lane, Dawlish EX7 0LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr and Mrs Willey, Ms K Willey and Mrs A Peattie against Teignbridge District Council.
 - The application Ref 19/1449/MAJ is dated 8 August 2019.
 - The development proposed is described on the application form as 'hybrid planning application. Full permission for site access & roads. Outline permission for layout of 24 No. Self custom build dwelling plots.'
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Decision

1. The appeal is dismissed and planning permission is refused for the development proposed.

Preliminary matters

2. The appeal is against the Council's failure to reach a decision in respect of application Ref. 19/1449/MAJ within the relevant statutory period. The Council, however, oppose the proposal (setting out 8 reasons in that regard).
3. 'Full' permission is sought for proposed site access and roads. Outline permission, with appearance, landscaping, layout and scale reserved for future consideration ('reserved matters'), is also sought. There is some overlap between access, roads and layout. I have, however, treated information before me in respect of reserved matters as indicative.

Planning context

4. Part of the wider holdings of 'Hilldrive', the appeal site is a parcel of land to the west of Secmaton Lane of about 1.6 hectares. I am told that it has latterly been used for producing hay. Outline permission for residential development, indicatively 35 dwellings, was granted at appeal in 2016.¹ A reserved matters application was not, however, pursued (and thus that permission has lapsed).
5. The site falls towards the fringes of Dawlish. Nevertheless there are dwellings opposite across the Lane. Immediately to the north there is a short line of dwellings by the Deodar. Beyond those properties, tracking east to west, winds Shutterton Brook. The Brook passes under Exeter Road (A379), an arterial route to and from Dawlish, just before the junction with Secmaton Lane relative to the appeal site. At the time of my site visit development was

¹ Ref. APP/P1133/W/16/3146215.

underway a short distance beyond the Brook, accessed via new spur of the Exeter Road/ Black Swan Road roundabout. There are various services and facilities broadly between the site and the roundabout.

6. In that context the Council support the principle of residential development here. The appeal site forms part of allocation DA2 of the Teignbridge Local Plan 2013-2033 (adopted May 2014, the 'Local Plan'). DA2 extends to around 43 hectares and makes provision, amongst other things, for at least 860 homes. The allocation comprises different parcels of land, the site being within development area 5. Land north of the Brook falls within area 4. Area 3 is to the west. As is inevitable in larger allocations, different sites and aspects of DA2 are progressing at differential rates.
7. Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise. There is no indication that neighbourhood planning work here is of a sufficiently advanced stage that it may be accorded significant weight. With reference to paragraphs 11, 68 and 74 of the National Planning Policy Framework ('NPPF'), the appellants draw my attention to an early 2022 appeal decision at Chudleigh Knighton.² In that instance, and at that juncture, the Inspector reasoned that the Council was unable to demonstrate a five year housing land supply. I will return to that decision.
8. In addition to the NPPF, I have had regard to various other material considerations. Notably in that context, to add further detail to Local Plan policy DA2, and also DA6 governing green infrastructure provision, in June 2016 the Council adopted a Supplementary Planning Document related to the site (the 'DA2 SPD'). Amongst other things, I have also had regard to the Council's Custom and Self Build Supplementary Planning Document (adopted July 2016, the 'CSB SPD'),³ and to the Planning Practice Guidance ('PPG').

Main issues

9. I consider the main issues to be (i) whether or not the proposal would make appropriate provision for affordable, relative to custom build, housing, (ii) the effect of the proposal and access provision on the surrounding highway network, and (iii) the ecological implications of the scheme. I will also address obligations ventured pursuant to section 106 of the Town and Country Planning Act 1990 as amended (the '1990 Act').

Reasons

Affordable housing

10. The appellants draw my attention to a 2018 appeal decision in Islington.⁴ They quote part of paragraph 14 of that appeal decision, wherein the Inspector states 'there is no distinction in national policy between small-scale development and self-builders in terms of affordable housing provision.' That, they say, explains how NPPF paragraph 65. c) 'indicates an exemption' to

² Ref. APP/P1133/W/21/3273012.

³ Consistent with Local Policy WE7 and the NPPF, for brevity I have used self-build and custom build interchangeably in this decision.

⁴ Ref. APP/V5570/W/18/3202022.

where affordable housing can legitimately be sought. The appellants' principal contention is therefore that no affordable provision is required.

11. There is no merit in that argument. The Islington appeal revolved around the threshold at which affordable housing contributions may legitimately be sought relative to the scale of development. That is now articulated in NPPF paragraph 64, not paragraph 65. The appellants' excerpt from that appeal decision, which concerned whether or not an affordable housing contribution could legitimately be sought from a proposal for a single dwelling in an area with a wholly different policy context, is also partial and out of context. The current proposal, numerically, is major development and therefore affordable housing may legitimately be sought within the terms of NPPF paragraph 64.
12. NPPF paragraph 65 also appears to also have been misinterpreted. In summary, and with certain nuances, that paragraph sets out that 'at least 10%' of the total number of homes proposed in respect of major development should be available for 'affordable home ownership'. One exception to that 10% level is where the development is 'proposed to be developed by people who wish to build or commission their own homes.' Critically, affordable home ownership is not a synonym for affordable housing. As set out in NPPF Annex 2, it is a subtype thereof.
13. Moreover the NPPF does not displace the development plan. Local Plan policy WE2, criterion a) ii) sets out that, at Dawlish, 25% affordable housing will be sought. That aligns with policy DA2. NPPF footnote 31 clarifies that the 10% affordable home ownership referenced in paragraph 65 should be 'as part of the overall affordable housing contribution from the site.' There are pressing needs for affordable housing in Dawlish; I am told by the Council that presently some 138 households are eligible in that regard.
14. Furthermore the DA2 SPD, restating that 25% of homes should be affordable at allocation DA2, explains that the tenure split should be agreed with the Council's Housing Team at the time of the application. It is typically the case, given market dynamics, that affordable housing needs are heavily skewed towards other forms of provision than affordable home ownership. That appears to be the case here, noting the tenure split agreed in the undertaking associated with the 2016 appeal (30% intermediate, 70% affordable rented).
15. Being built or commissioned by future occupants, notwithstanding eligibility for relief or exemption from Community Infrastructure Levy, I acknowledge that self or custom build entails lower margins than other types of housebuilding (if that concept may be applied at all). However, notwithstanding Local Plan policy WE7, criterion c, the Local Plan is similarly clear that custom build and affordable housing are not synonyms.⁵
16. Secondly the appellants state that 'if the NPPF exemption is not accepted by the Inspector then the applicant is prepared to pay an off-site contribution of £10,000 per plot (for 6 affordable plots) in line with affordable custom building policy.' That is notwithstanding viability, to which I will return. The appellants have advanced an 'optional' obligation on that basis. Numerically, 6 affordable plots accords with the 25% proportion sought via Local Plan policy WE2.

⁵ Paragraph 4.23.

17. The rationale for that second position derives from comments provided by a housing enabling officer in respect of a scheme at Starcross. There appears, however, to be no direct read across to the relevant elements of the CSB SPD in respect of affordable housing. The appellants also state that 'since TDC are proposing a site of 6 affordable custom/self-build homes in Dawlish on brown field land within the emerging Local Plan due to be adopted in 2024. This would mitigate the cost of the plots on this site, since 6 were required on our site.'
18. However, from the limited information before me, the Starcross proposal appears to be an affordable housing led scheme (a cross-subsidy rural exception site). There is no discernible justification for a sum of £10,000 as opposed to another amount, nor clarity as to what bearing the 6 affordable custom/ self-build homes referenced above has on this specific site as opposed to provision more generally. Furthermore, even if the sum of £10,000 were appropriate in respect of the Starcross proposal, the viability of rural exception sites and custom-build housing is unlikely to be directly comparable.
19. I therefore conclude that the proposal would not make appropriate provision for affordable housing, in conflict with the approach in the relevant provisions of Local Plan policies S4, WE2, DA2 and NPPF paragraph 60. The latter sets out the importance of ensuring that the needs of groups with specific housing requirements are addressed.

Custom build

20. I have reviewed all the evidence before me in terms of the adequacy of the Unilateral Undertaking of 20 June 2022 (the 'UU') and of its genesis. The proposal is advanced as for 'self custom build'. Setting aside the foregoing, it would theoretically be possible to secure the proposal as such (whether via condition, obligation, or both). Self or custom build sites may take some time to come forward, and in certain instances in Teignbridge they appear to form latter phases of wider sites or projects. I also acknowledge, at least in theory, that the plots proposed here could come forward relatively expediently.
21. Nonetheless the appellants explain how 'the Council is to be commended on its promotion of self-build and custom build.' Notwithstanding the foregoing qualifiers, and that 5% self-build is sought in DA2 as a whole, Appendix 2 to the Council's statement of case demonstrates that the Council is comfortably exceeding requirements for self-build provision in aggregate.⁶ It is therefore not so much a question of whether the proposal could be made to accord with Local Plan policy WE7 and the associated CSB SPD, but the knock-on implications were that to be the case. The proposal would, in summary, prioritise self or custom build over affordable housing provision. There are clearly more pressing needs for the latter.

Access

22. The proposal is for vehicular access via Secmaton Lane alone. The existing site access would be altered, including to provide greater width for vehicles travelling along the Lane, and there would also be an additional entrance (by indicative plots 18 and 19). No vehicular link westwards is proposed. Such a

⁶ With reference to the Self-build and Custom Housebuilding Act 2015.

westwards connection would also appear to be prevented in the future; the proposal indicates that an ecological buffer would encircle the site. The appellants have submitted a revised 'Key Diagram' at appeal.⁷ That suggests 'an indicative location for [a non-vehicular] link' to development area 3. An appeal should not be used to evolve a proposal, although that revised plan does not alter my reasoning in respect of this main issue.

23. Secmaton Lane, judging by its narrowness, sufficient for only one vehicle to pass at a time for significant stretches, the paucity of passing places and also of informal space to take refuge from oncoming traffic, along with its enclosure, appears historic in origin (in common with many Devon lanes). It was not designed to serve the significant number of properties, or vehicular movements, that it now accommodates.
24. As in respect of the 2016 appeal, local residents have made submissions attesting to its constrained nature and levels of use. Although a snapshot in time, during my mid-morning site visit I saw various vehicular and pedestrian movements along the Lane (and had to pull over on occasions to allow other vehicles to pass). I understand that the Lane was stopped up around Veryan Close in 2002. There is therefore no longer a vehicular through route towards Elm Grove Road (which leads broadly towards the town centre).
25. The Local Plan and the DA2 SPD treat allocation DA2 as a whole entity. The DA2 SPD envisages a vehicular route between the appeal site and development area 3 to the west, and thereafter to Elm Grove Road. Such a link also appears on a plan associated with an as yet undetermined application at the neighbouring site.⁸ Significantly the DA2 SPD envisages a 'temporary' vehicular access to Secmaton Lane associated with the development of the appeal site, which would be replaced in time with pedestrian and cycle connectivity alone.
26. The appellants state that the highway authority (Devon County Council, 'DCC') has confirmed the highways plan as acceptable, and that they agree that 'the site can be suitably serviced without a link road to the west'. There are representations before me from DCC of 25 June 2014 and 5 August 2019. There is also a 'consultation response from spatial planning and delivery' related to application Ref 14/01577/MAJ, the subject of the 2016 appeal. The latter states how 'there is no need to require that this small portion of the DA2 site is accessed via the DA2 link road....'
27. DCC correspondence of 25 June 2014 sets out that neither the geometry, nor level of usage of, Secmaton Lane would intrinsically have prevented the lapsed scheme from coming forward. However that representation is premised on the intention to create an alternative vehicular connection in time. There are parallels with the DCC representation of 5 August 2019, which states that 'the access onto Secmaton Lane would need to be converted to a pedestrian/ cycle/ access when an alternative vehicular connection is made.' The context to those representations is important.
28. The previous Inspector considered the Council's position in respect of application Ref 14/01577/MAJ, identifying a distinction between safety and

⁷ Plan No. J 473/ 02B, dated 17 February 2022.

⁸ Plan No. 554 050 Rev: C, related to application Ref 21/02674/MAJ, the successor to unsuccessful application Ref. 17/01654/MAJ referred to in paragraph 1.6 of the appellants' statement of case.

convenience (as remains articulated in NPPF paragraph 111). Referring to the earlier DCC representation, the former Inspector concluded that accessing the appeal site via Secmaton Lane would not necessarily pose a problem in terms of safety, but would 'add to the inconvenience of users'. He therefore agreed with DCC and the Council 'that the Secmaton Lane access would only be suitable as a short term expedient...'.

29. In my view that logic still holds. Given the nature of the Lane described above, additional vehicular use would, whether associated with 24 or 35 properties, would result in significant added inconvenience (notwithstanding some realignment around proposed accesses which would only, inevitably, affect a small part of the Lane). If anything, circumstances at Secmaton Lane in terms of its operation have worsened in recent years; I am told by the appellants that, since its stopping up in 2002, permission has been granted for 17 new dwellings along it. Additional vehicular movements associated with the site have the clear potential to obstruct the carriageway, leading both to inconvenience and increased scope for conflict between users. Such effects may be acceptable, or tolerable, provided they would be only temporary.
30. Moreover I note that the DA2 SPD was adopted in June 2016. The previous Inspector's decision is dated 29 July 2016. DA2 SPD paragraph 3.3.4 sets out that 'the highway link to the western boundary of ... should be provided prior to the occupation of 25 dwellings in Development Area 5.' In imposing associated condition 9, i.e. that vehicular access to the Lane should only be a 'short term expedient', the previous Inspector reasoned that 'the proposal is thus consistent with the [DA2] SPD, and this weighs heavily in its favour'. That is in contrast to circumstances here.
31. There is moreover nothing substantive to indicate that 25 dwellings represents some form of 'tipping point' above which vehicular pressures on the Lane become unacceptable. It appears rather a practical mechanism geared towards securing a western vehicular link at a relatively advanced stage of site build-out. Acknowledging the sloping topography of the site and embankment alongside development area 3, nonetheless a residential density of around 15 dwellings a hectare appears significantly lower than that which typically prevails in the surroundings (noting Local Plan policy S2, criterion b).
32. I accept that some time has elapsed since the adoption of the Local Plan and the DA2 SPD. The appellants indicate that there have been challenges with other applications at allocation DA2, including in respect of viability, bridging the Brook, and that there are timing implications in terms of Housing Infrastructure Funding. Nonetheless, delivery at substantial allocations inevitably takes some time and negotiation. There is no substantive evidence to indicate that any challenges encountered in respect of allocation DA2 are insurmountable, or at this juncture justify a particular element thereof being advanced separately (diverging from a genuinely plan-led approach).
33. The appellants further argue that vehicular access westwards would be impractical, with reference to topography, trees, and ecology (bats specifically). I acknowledge that there is a relatively steep decline through the site, broadly from Hilldrive towards the Brook.⁹ However the appellants also

⁹ Plan No. JDA113_LA_Rev 1.

argue that it would be possible to create internal roads capable of being adopted reaching a height of about 15.93 metres Above Ordnance Datum.¹⁰ Avoiding trees T310, T311, T312, T313 and T313a between the appeal site and development area 3,¹¹ there are points along the common boundary lower in the topography than that. Neither the topography, nor according due sensitivity to trees, would necessarily impede a westwards vehicular link.

34. The site is, I acknowledge, relatively near to the South Hams Special Area of Conservation which includes a scatter of greater horseshoe bat roosts. There have also been recordings of various bat species in the area, albeit principally along Shutterton Lane some distance from the site. However the 2019 Preliminary Ecology Appraisal draws a clear distinction between the eastern Secmaton Lane boundary of the site and the western where the trees referred to above are located. The eastern boundary is defined as a 'species rich defunct hedgerow', the western hedgerow as 'a species poor defunct hedgerow'.¹² A subsequent bat survey similarly found the eastern site boundary to be of greatest value to bats, recommending a 10 metre natural buffer along it compared to 5 metres along other boundaries.¹³
35. Both the initial and revised versions of the Key Diagram, however, illustrate a consistent green-edged buffer zone around the site's perimeter. That is not in accordance with the recommendations in the bat survey. A buffer zone of whatever width also appears to transgress site accesses. Logic would suggest that, from an ecological perspective, providing access from the west would be preferential to providing access from Secmaton Lane (notwithstanding any mitigation or enhancement).
36. Summarising the foregoing, the proposal would have an adverse effect on the operation of Secmaton Lane and be poorly connected with the wider DA2 allocation without robust justification. The proposal would therefore conflict with Local Plan policies S2 (criterion d), S5 (criterion e) and DA2 (criterion f) and NPPF paragraph 112. c). NPPF paragraph 110. c) refers to the National Design Guide, which amongst other things, sets out how well-designed places are 'integrated into their surroundings so they relate well to them.' That would not be achieved.

Ecology

37. Notwithstanding the appellants' observations regarding the nature of the Secmaton Lane boundary, and irrespective of whether plural ownership or collective management would be capable of ensuring long-term safeguarding of hedgerows and natural areas, for the foregoing reasons there is a disjuncture between on-site ecological recommendations and the scheme advanced. Whilst not development of the magnitude requiring an Environmental Statement, a different process to Habitats Regulations Assessment,¹⁴ the site nonetheless

¹⁰ Plan No 0700, Rev P1.

¹¹ As shown on plan 04057 TCP 27.06.19, categorised B aside from T311 and T313a categorised C via the appellants' Tree Survey with reference to British Standard 5837: 2012 (noting the appellants' reference to Tree Preservation Orders and works proposed via unsuccessful via application Ref. 19/02055/TPO).

¹² Orbis Ecology, 24 July 2019.

¹³ BlueSky Ecology, Bat Survey Report, August 2015.

¹⁴ The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 as amended pursuant to the Environmental Impact Assessment Directive (2011/92/EU, as amended), distinct from the Conservation of Habitats and Species Regulations 2017 as amended.

falls relatively close to a number of ecologically sensitive sites.¹⁵ I am statutorily required to take reasonable steps to conserve and enhance the natural features of SSSI and to conserve biodiversity more broadly.¹⁶

38. Those sites are variously protected on account of the value of their habitats and the fauna they support. Whilst not a precise correlation, additional recreational pressure associated with additional housing nearby has the potential to adversely affect ecology integrity. There is additionally a hydrological pathway at play. On account of the topography and scheme design, the site would drain to the Brook which leads to the Exe. Runoff has the potential to affect the ecological balance there.
39. I note the obligations contained in the UU and the evidence before me in respect of drainage. Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. Appropriate assessment is unnecessary, however, where there is no intention to grant permission, for example where refusal stems from another reason. Therein lies the crux of the matter insofar as related to the principal important controversial issues in this appeal.
40. Notwithstanding the conflict between the scheme and the ecological information referenced above, there may be a way of ensuring that undue ecological effects of the development proposed elsewhere could be avoided. That may be achievable via reserved matters applications, additional conditions, obligations or some combination thereof. However even were the proposal acceptable in terms of ecology, that would be effectively neutral in my assessment of the scheme.

Other matters

41. The proposal would inherently entail certain benefits. Allowing the appeal may enable a smaller site, relative to DA2 as a whole, to come forward more expediently. There would also be economic and social benefits, both during construction and occupation. There may be merit in looking at progress at site allocations as time progresses.
42. There is an intricate history before me related to obligations associated with the scheme. Disputes between the main parties remain over the adequacy, and also precision, of the Unilateral Undertaking dated 20 June 2022 (the 'UU'). However setting aside any dispute, the UU intends to address matters related to ecology, drainage and health care. Consequently, and in a similar manner as reasoned in paragraph 40 of this decision, it would theoretically be possible to arrive at suitable and mutually-agreed obligations.
43. That is subject to the caveat that the appellants allude to a potential 'viability issue'. However, contrastingly, the appellants also say that 'we are not using the viability route'. Those statements are unclear; the onus is principally on an appellant to substantiate their case.¹⁷ Similarly, without clear justification, the appellants state that 'the LPA policies are also out of date and have not been

¹⁵ The Exe Estuary Special Protection Area, Ramsar site and Site of Special Scientific Interest, the Dawlish Warren Special Area of Conservation and the Dawlish Cliffs Site of Special Scientific Interest.

¹⁶ Section 28(G) of the Wildlife and Countryside Act 1981, section 40 of the Natural Environment and Rural Communities Act 2000 as amended.

¹⁷ Section 62(3) of the 1990 Act, PPG Reference ID: 10-006-20190509.

revised to accord with the NPPF2'. It is unclear which policies are referred to in that context, and I have identified harm by virtue of conflict with both relevant provisions of the development plan and NPPF above. I also note that statute requires a local plan to be reviewed, not updated, every five years.¹⁸

44. However NPPF paragraphs 55 to 57 are critical. They set out how consideration should be given as to whether otherwise unacceptable development may be made acceptable through the imposition of conditions or obligations (in that order of preference). In that context, even were appropriate conditions and obligations agreed, and even were the scheme acceptable in all other respects, that would not overcome the harm that would result. Any gains in terms of expedient delivery by virtue of the scheme relative to broader progress at allocation DA2 would, in all likelihood, be modest (not least given the statutory timeframe for reserved matters applications).¹⁹ Those benefits would also be to the detriment of affordable housing provision as above.
45. There is no substantive evidence before me as to whether or not the Council are presently able to demonstrate a five year supply of deliverable sites for housing; the only indication in that respect being the 2022 appeal referred to in paragraph 7 above. However that decision was reached via hearing undertaken in late 2021, quite some time ago. It appears the Inspector's finding in that instance was also on the basis of 'sparse' information that may now be more fulsome. Whilst neither the development plan nor NPPF prevent housing delivery where that would exceed five year land supply requirements, there is no indication that the finding arrived at by the Inspector in the 2022 decision was informed by delays in site allocation delivery specifically. Adding further confusion the appellants also state that the 'tilted balance is not yet engaged'.
46. In that context no other matters are sufficient to alter my overall finding that the development proposed would be unacceptable or to justify allowing the appeal. Even if NPPF paragraph 11) d) ii. were engaged,²⁰ based on the evidence before me, and inherent in my reasoning above, is that the adverse impacts of allowing the proposal would significantly and demonstrably outweigh the benefits.

Conclusion

47. For the foregoing reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Tom Bristow
INSPECTOR

¹⁸ Via The Town and Country Planning (Local Planning)(England)(Amendment) Regulations 2017.

¹⁹ Section 92 of the 1990 Act.

²⁰ Notwithstanding any implications of NPPF paragraph 11) d) i., footnote 7 to which refers, amongst other things, to habitats sites policies.