



Appeal Decision

Site visit made on 5 October 2022

by Matthew Jones BA(Hons) MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/Y1110/W/22/3296065

Land East of Barley Lane, Exeter EX4 1SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by ALD Developments against Exeter City Council.
 - The application Ref 21/1377/OUT, is dated 25 August 2021.
 - The development proposed is '*outline planning application for a residential development of up to 9 dwellings and associated infrastructure*'.
-

Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural and Preliminary Matters

2. The planning application was submitted in outline with all matters aside from access reserved. I assessed the appeal as such, having regard to the drawings which accompany the appeal on an illustrative basis, aside from where they relate to the proposed site accesses.
3. During the latter stages of the appeal the appellant submitted an appeal decision made on 11 October 2022, Ref APP/Y1110/W/22/3296946, relating to a site in Exeter at Topsham. As this decision was made after the appeal before me was submitted, and as it was of relevance, I had regard to it. In that appeal it was common ground between the main parties that the Council is unable to demonstrate a supply of deliverable housing sites and has a supply of about four years. I adopted this agreed position for the benefit of my own assessment, as it is the most up to date that I have.
4. Similarly, the Council submitted an extract of the Exeter Landscape Sensitivity Assessment (August 2022), beyond the appeal timetable. Given its date of publication, after the submission of the appeal, and as it was of potential relevance, I also had regard to it as landscape evidence. The appellant was provided with an opportunity to comment on the document during the appeal.
5. The Council failed to determine the application subject to this appeal. However, it has since provided an officer report which sets out three putative reasons for refusal had the Council determined the application. The first two relate respectively to the character and appearance of the area and highway safety.
6. The third reason for refusal relates to the absence of an agreement to secure necessary planning obligations. Such an agreement (the S106) was latterly submitted with the appeal. The S106 seeks to secure planning obligations in relation to affordable housing, health, travel planning, habitats mitigation and off-site play provision. Where necessary, I have made further reference to these planning obligations later in my decision.

7. I am also mindful that the site is within the immediate setting of the Grade II listed building Lugg's Farmhouse and that imposed upon me is a duty to have special regard to the desirability of preserving its setting.

Main Issues

8. In light of all the above, and all other evidence before me including the submissions of interested parties, I consider the main issues to be:
- the effect of the proposal on the character and appearance of the area, with reference to the Landscape Setting of Exeter and the setting of Lugg's Farmhouse; and,
 - the effect of the proposal on highway safety.

Reasons

Character and appearance

9. The site is predominately an area of sloping former farmland above and around Lugg's Farmhouse, with the historic dwelling, its grounds and associated outbuildings cut into the hillside. Within the south portion of the site is Orchard Bungalow. There are existing access points from either Redhills to the east or from Barley Lane, which occupies a ridge and bounds the site to the west.
10. The site is at the west edge of Exeter at the periphery of its Landscape Setting, a local designated focused on the north fringe of the city pursuant to saved Policy LS1 of the 2005 Local Plan Review 1995-2011 (Local Plan). However, Lugg's Farmhouse and its outbuildings combine with Orchard Bungalow and belts of woodland to significantly reduce the visual prominence of this small site in medium to long views. I concur with the appellant's landscape evidence that the site does not have a significant role in the city's Landscape Setting and that the scheme would have a minimal impact upon that Landscape Setting.
11. Nonetheless, as an historic farm worker's dwelling, Lugg's Farmhouse draws a level of significance from its retained rural setting, chiefly the former farmland around it. The site is still legible as such and is identified in the evidence as part of an historic farming landscape dating to the Middle Ages. Given also its open and verdant appearance and intimate relationship to Lugg's Farmhouse, the site makes a clear positive contribution to the setting of the listed building.
12. The illustrative drawings and my own observations indicate that the dwellings, even if single storey and set within landscaping, may well break the skyline above and around the listed building. The dwelling at the southeast corner of the site would be clearly visible as it would front Redhills. From a gateway on Barley Lane the site provides the green foreground to the listed building, which would become urbanised. On the evidence, the scheme would therefore usurp the primacy of Lugg's Farmhouse within its former agrarian setting and significantly diminish the open and verdant qualities of that setting.
13. The appellant's heritage appraisal defines this as a 'minor adverse change' capable of reduction or mitigation. How the harm could be mitigated or reduced is unclear. Screen planting would not necessarily be suitable as it is the interplay between Lugg's Farmhouse and the site's legibility as historic farmland which conveys significance in this case. The heritage appraisal does not adopt the parlance of the National Planning Policy Framework (the

- Framework). When I do so, I reach the same conclusion as the Council that less than substantial harm would result to the significance of the listed building.
14. That is not to be treated as a less than substantial planning objection, and the Framework informs us that great weight should be given to the conservation of designated heritage assets. Paragraph 202 requires decision makers to weigh less than substantial harm against the public benefits of the scheme, including securing its optimum viable use. That balancing exercise must take place in the context of s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which sets a strong presumption against a grant of permission for development that would cause harm to the setting of a listed building.
 15. The government is seeking to significantly boost the supply of housing and the scheme would contribute up to nine homes to the local area, at the edge of a city with extensive services and facilities, that has experienced a prolonged shortage in supply. 35% of the housing could potentially be delivered as affordable housing. I have no reason to doubt that the housing would be delivered quickly and the demand for the housing is reinforced by the submissions of supportive interested parties. There would also be short term direct and indirect local economic benefits during the construction phase and lasting economic benefits in association with the occupation of the housing, not least in improving Exeter's economic competitiveness.
 16. There would be social benefits through likely modest increases in the usage of local services and facilities, such as bus services. Funding secured via the Community Infrastructure Levy (CIL) would be a requirement, but nonetheless a small practical benefit. There is the potential for modest biodiversity net gain through tree and shrub planting within the site. Overall, and accepting the shortfall in the housing land supply as agreed at Topsham, the public benefits arising from the provision of a maximum of nine dwellings attract moderate weight. They do not outweigh the harm to the setting of the listed building, to which I assign considerable importance and weight.
 17. Accordingly, whilst the proposal would not harm the Landscape Setting of Exeter, I conclude that it would have an unacceptable effect on the character and appearance of the area with reference to the setting of Lugg's Farmhouse. It would therefore conflict with the design and heritage aims of Policy CP17 of the Core Strategy (adopted 2012), saved Policies C2 and DG1 of the Local Plan and the Framework.

Highway safety

18. Barley lane has the national speed limit but is narrow, has a limited place function, is enclosed along the site boundary by a dense hedgerow and bends past the site of the proposed access in a manner that reduces forward visibility.
19. The appellant has calculated the likely daily trip rates associated with the scheme but the adequacy of the proposed 25m visibility splays on Barley Lane has not been substantiated with relevant quantitative data, such as a speed survey. Whilst no collisions have been recorded along this section of Barley Lane since at least 2016, that is not to say that the access would be safe.
20. The appellant has referred to the 'low speed' of vehicles along the lane, but from my own observations, vehicles travel along the lane at variable speeds. Approaching road users are likely to be focusing on movement from the

properties on the west side of the carriageway and not necessarily expecting to encounter vehicles leaving a site on the inside of the bend. As such, on the evidence before me, I cannot rule out that the scheme would significantly raise the potential for conflict between road users in Barley Lane.

21. Consequently, I conclude on this issue that the proposal would have an unacceptable effect on highway safety. It would conflict in this regard with Policies AP1 and T3 of the Local Plan and the Framework.

Other Matters

22. The appellant as stated that allowing this appeal would be consistent with the approach in relation to the appeal allowed earlier this year close by¹. However, each proposal must be assessed on its own individual merits, and I note in that case that there was no listed building set intimately amongst the environs of the appeal site, nor determinative highway safety concerns. It has therefore had limited influence upon my reasoning.
23. The appeal site is within the influence of the Exe Estuary Special Protection Area (the SPA). It is common ground that the proposal would have likely significant effects on the integrity of the SPA through increased recreational use. I have no reason to disagree. The S106 accompanying the appeal together with the CIL is intended to secure mitigation for these effects. Had I been minded to allow the appeal it would have been necessary for me to consider this matter with an Appropriate Assessment. As I am not, I have not done so.
24. Similarly, I note that the appellant's ecology evidence states that given the known Dormice population in the local area and the suitable habitats on and nearby the appeal site, it is likely that Dormice will be recorded on the site. Given such, and particularly the significant hedgerow loss along Barley Lane, it would have been necessary for me to further consider the impact of the development on the integrity of the Dormouse, a European Protected Species.

Planning Balance

25. The scheme would conflict with the development plan when read as a whole. The Council cannot demonstrate a five-year supply of deliverable housing sites. In which case, Paragraph 11 of the Framework states that the most important policies for determining the appeal are out-of-date and permission should be granted unless the application of policies in the Framework that protect assets of particular importance provide a clear reason for refusing the proposal. These assets include listed buildings. Consequently, given the harm that would arise to Lugg's Farmhouse, Paragraph 11 d) ii) of the Framework is not engaged.
26. Drawing my assessment together, there are no other considerations, including the Framework and the aforementioned public benefits of the scheme, which outweigh the conflict with the development plan. For the above reasons, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones
INSPECTOR

¹ Appeal Ref APP/Y1110/W/21/3278148