



Appeal Decision

Site visit made on 20 December 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/Q1153/W/22/3299678

Land at Cross Roads Farm, Road from Huddispitt Cross to Cross Roads, Cross Roads, Lewdown EX20 4DP

- 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 Viburnum (SW) Ltd against the decision of West Devon Borough Council.
 - The application Ref 3212/21/FUL, dated 2 July 2021, was refused by notice dated 18 March 2022.
 - The development proposed is construction of 22 dwellings and associated estate road, gardens and open space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 14 March 2022 and before the Council refused permission, revised plans were submitted showing an alternative layout of 21 dwellings instead of 22, along with details of the surface water scheme, albeit without these communications specifically highlighting the reduction in the numbers of dwellings. The Council refused the application on the 18 March without having undertaken any consultation on the revised plans or the related change to the description of the development. With the exception of the revised site layout plan (Plan ref 2314 (PL-) 01B Site Plan), the plans, including the revised layout of 21 dwellings as part of the drainage scheme, were submitted with the appeal.
3. Under the Wheatcroft principles¹, regard should be had to whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. Whilst the change between 21 and 22 dwellings is material, the nature of any concerns of individuals or consultees who would normally have been consulted can be assumed from their responses on the original plans. Additionally, the drainage officer has been specifically consulted about these aspects.
4. As such, despite my initial concerns about the same and the interchangeable references to 21 and 22 dwellings in the submitted statement, I do not consider that anyone's interests would be specifically prejudiced by taking the amended plans for 21 dwellings into account and shall therefore determine the

1. Wheatcroft Ltd V SSE [1982]

appeal on the basis of the plans referred to on the decision notice along with the and amended layout and drainage plans.

5. A unilateral undertaking (UU), dated 1 December 2022, was submitted with the appeal and provides for 7 of a total of 21 dwellings to be provided as affordable homes; 4 of a social rent tenure and 3 of an intermediate sale tenure. This is addressed below.

Main Issues

6. The main issues are:

- whether the location of the development accords with local policies that seek to locate new dwellings where they would enhance or maintain the vitality of rural communities;
- how the proposed development would affect the balance of the local housing stock;
- the effects on the character and appearance of the area and whether the proposal would represent good design;
- whether the highway design and layout of the site would be adequate;
- the effects of the development on adjacent trees;
- whether the development would incorporate adequate surface water drainage measures; and
- whether the development would include adequate carbon reduction measures.

Reasons

Location of Development

7. The appeal site comprises a field adjoining a recently-completed development of 17 dwellings to the east. The site and adjoining estate are accessed via rural road to the east, and agricultural land to the north and west. Some existing housing is situated to the south of the appeal site, close to Lewtrenchard School, and extending in both a southerly and easterly direction from there.
8. The appeal proposal seeks to construct 21 dwellings, of which there would be a range of 1 bed bungalows, along with 2, 3 and 4 bedroom houses. Ancillary works would include the provision of the access, estate road and an area of open space.
9. In terms of the policy context, the development plan includes the Plymouth and South West Devon Joint Local Plan (JLP) which was adopted in 2019. Policies SPT1 and SPT2 set the overarching strategy for development in the plan area with the aim to create sustainable linked neighbourhoods and sustainable rural communities.
10. The appeal site falls within the 'Thriving Towns and Villages' (TTV) area where Policies TTV1, TTV2, TTV25 and TTV26 are most applicable. Policy TTV1 sets out the hierarchy of settlements which are to receive proportionate amounts of growth over the plan period, with smaller villages, hamlets and the countryside being where the least development will be permitted subject to other policies in

the Plan. Policy TTV2 sets out that housing should be located where it will enhance or maintain the vitality of rural communities.

11. In the preamble to Policy TTV1, Lewdown is listed as a third tier 'Sustainable Village' which offers limited but vital services and amenities. Sustainable villages are considered appropriate to accommodate development to meet locally identified needs to help sustain their limited services and amenities. In order to do so, encouragement is offered to communities to identify sites through neighbourhood plans, though there is no such plan in place for Lewdown.
12. Policy TTV25 sets out that the provision of around 550 homes will be sought from the sustainable villages as part of the overall housing supply for the TTV policy area. This combined total includes for a provision of around 30 dwellings from Lewdown (as set out in Figure 5.8).
13. Lewdown is a largely linear settlement which hosts a shop/post office and public house and its eastern extent includes the dwellings at 'The Market Place' and 'Baring Court', from which the village hall and cricket club sit slightly removed and to the east. To walk from the appeal site to the public house or Post Office in Lewdown takes around 10 minutes (one way) over a broadly level route of around 0.8km in length utilising an existing street-lit footway. The bus services that serve Lewdown also stop at the crossroads near the appeal site entrance.
14. In my view, the sustainability of the settlement of Lewdown and its ability to receive around 30 dwellings over the plan period is likely to be related, in part, to the existence of Lewtrenchard School as one of its vital services.
15. Though I note that the directional signposts to 'Lewtrenchard' appear associated with a few dispersed dwellings, old manor house and church, the School of the same name is located at the crossroads and the volume of development that exists around it, even prior to the development of 17 dwellings, is suggestive of the existence of a smaller settlement. For the sake of simplicity, I refer to this settlement as Lewtrenchard as well. This settlement is outside of, and to the east of the main built limits of the village of Lewdown. Its form and shape are less easily definable, but includes the more tenuously located 'Jethros' brownfield site and 'Myrtle Cottage'; both of which fall within the 40 mph speed-restricted area.
16. In my view, the appeal site is best described as being adjacent to the built up area of the settlement of Lewtrenchard, which is close to Lewdown and which, as settlements, rely on one another for some vital services. In this context, Lewtrenchard is best described as falling in the fourth tier of settlement outlined in TTV1, as a 'smaller village'. In such areas, as with hamlets and the countryside, under Policy TTV1, development will be permitted "...only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and 2), including as provided for in Policies TTV26 and TTV27".
17. Given the relative sustainability of the site owing to its connectedness with Lewdown and means to enable the use of a range of modes of travel, it could support the principles of development and sustainable communities by delivering housing that helps to maintain the vitality of a linked rural community. As I find that the proposal aligns with the requirements of SPT1

and SPT2, I have considered policies TTV26 and TTV27 only briefly. I find that neither are more specifically relevant to this particular scheme in its given location than TTV1, TTV2 and the requirements of SPT1 and SPT2, as already outlined.

18. I have limited evidence as to whether the number of 'about 30 dwellings' for Lewdown may have been achieved by this stage of the plan period or how any addition beyond it would affect the sustainability of the community. Though the Council suggests that the targeted dwellings would preferably be located within the built limits of Lewdown, that is not the nature of the proposal before me.
19. As such, in view of its ability to help enhance the vitality of the local rural communities, the location of development accords with JLP Policies SPT1, SPT2, TTV1, TTV2 and TTV25, when taken together.

Housing Stock

20. Policy DEV8 of the JLP sets out the requirement for developments of 11 or more dwellings within the policy area to provide a minimum of 30% affordable housing and also requires that a mix of housing sizes, types and tenure appropriate to the area and as supported by local housing evidence should be provided. This is to ensure that there is a range of housing, broadening choice and meeting specialist needs for existing and future residents. It further clarifies that the most particular needs in the policy area are "(i) homes that redress an imbalance within the existing housing stock, (ii) housing suitable for households with specific need and (iii) dwellings most suited to younger people, working families and older people...".
21. The revised scheme of 21 dwellings comprises broadly 24% 1 and 2 bed dwellings, 52% 3 bed dwellings and 24% 4 bed dwellings. Though it is alleged that the scheme would fail to provide 20% accessible housing as required by Policy DEV9, minor adjustments and a planning condition could ensure that this were addressed relatively simply.
22. The Council maintain that the scheme would perpetuate an imbalance towards 4 bed detached housing. The JLP Supplementary Planning Document (SPD) (2020) sets out that in South Hams and West Devon there is an imbalance between existing housing stock and the projected size and needs of newly forming households, with both having a higher proportion of 4 or more bed homes and problems with under-occupancy of the same. The SPD clarifies that the aim of Policy DEV8 is to ensure that developers have an understanding of the existing housing stock at a town or parish level, the identified needs within the Strategic Housing Market Network Area, and how their given proposal responds to such.
23. Despite that the Planning Statement refers briefly to the 'SHMA Part 2'² and the predominant need for 2 and 3 bed homes, little else is offered about the housing mix other than that it is alleged to accord with JLP Policy DEV8.
24. In the absence of specific clarity in either the Policy or SPD about the housing mix requirements, a judgement is to be reached. When taken together, the 3 and 4 bed houses account for about 75% of the scheme, and the detached forms of housing also account for a similar percentage. In view of these factors

² Plymouth and South West Devon Strategic Housing Market Assessment Part 2 – Objectively Assessed Need for Affordable Housing (2017)

and the likelihood of such being beyond the financial grasp of a greater number of households, a further adjustment towards more smaller house types would better fit with the policy aspirations to redress an imbalance in the housing stock and promote greater opportunities for home ownership.

25. In view of the above, the scheme fails to accord with the provisions of Policy DEV8 of the JLP.

Character, Appearance and Design

26. In terms of effects on the character and appearance of the area, the site is a modestly-scaled, relatively elevated and visible field, bound by hedgerows and trees which provides some distance between the completed development and the tree-lined hedgerow that softens their impact on the landscape in views from Lewdown. The site could not be said to have a “very” rural character, but semi-rural is a more befitting description and it now acts as a form of buffer between the more inherently rural part of the landscape and the urban form of the adjacent development.
27. The introduction of the development of 21 dwellings on the site would consolidate the built urban mass when viewed in conjunction with the adjacent development. The separation that the site offers between the rural landscape and the completed development would be eroded, bringing the development much closer to the tree line and thus, increasing its visibility in views from Lewdown. Therefore, the overall scale, mass, and urbanising character of the development would be harmful considered in the context of the modestly-scaled settlement. Such effects would run counter to Policy DEV23 of the JLP which seeks to ensure developments conserve and enhance landscape, townscape and seascape character and scenic and visual quality, avoiding significant and adverse landscape or visual impacts.
28. In terms of the design of the scheme, the key aspects of concern for the Council appear to be the layout of the estate, the suburban character of the houses and the amount of floorspace considered in the context of the Nationally Described Space Standards³ (NDSS) (as linked to JLP Policy DEV10).
29. The proposal is to adjoin an already-completed development of 17 houses which were constructed in a cul-de-sac arrangement that cannot now be adapted to provide a more permeable layout. Whilst this scheme would utilise the same access and a spur of the estate road, it would add on yet another cul-de-sac. Though I accept the Council’s position that a more permeable layout would be preferable, the constraints are such that it would make only a limited degree of difference in this case. Whilst I find that there are some compromises with the layout insofar as some plots appear too close to trees, this is outlined separately below.
30. In terms of the character and appearance of the houses, it appears that there has been a deliberate attempt to create some consistency with the adjacent development. There would appear little logic in securing a completely different palette of materials for an addition which would be read as part of the same development, although conditions could be used to control the specific finishes to ensure seamlessness. I note that particular features, such as close-boarded

³ Technical housing standards - Nationally Described Space Standards – Department of Communities and Local Government March 2015

fencing is proposed for some garden boundaries, but the extents of this that would be adjacent to the estate road would be relatively minimal.

31. In terms of the internal floorspace of the houses considered against JLP Policy DEV10 and the NDSS, all of the house types appear from the measurement specified on the plans to meet the NDSS minimum floorspace requirements. It is assumed that the bedrooms also fall within NDSS requirements on this basis.
32. Considered in the round, in my view, the proposal would harm the semi-rural character and appearance of the area, but through its overall scale, location and resultant urbanising effects, rather than specifically its layout, or the design and appearance of the dwellings, given the precedent created by the adjoining development. The proposal therefore conflicts with Policy DEV23 in terms of its effects on the overall character, but not Policies DEV10 or DEV20, which relate more to the need to meet good standards of design and adequate space to achieve good living standards.

Highways

33. The Council have clarified that the relevant JLP policy to consider in connection with this reason for refusal is DEV29 which requires that developments provide safe and satisfactory traffic movement and vehicular access to and within sites.
34. The highways consultee response indicates that the proposed access would be safe and that the highway-related aspects would be satisfactory subject to suggested planning conditions. The informative suggested was that the driveways to Plots 2 and 3 would be difficult to use. There is no response to this from the appellant, but I agree that this reason has not been substantiated by the Council. Though these driveways may need to be navigated with some greater care and attention compared to others, neither appears so poorly designed as to give rise to such concern. The proposal would not, therefore, conflict with Policy DEV29 of the JLP.

Trees

35. The hedgerows surrounding the site include 3 groups of trees and six individual trees which give the site an attractive, established quality and help to soften the visual impacts of the 17 dwellings which have already been built on the adjoining site. In the submitted '*Arboricultural Impact Assessment*' (Nov 2021), many trees and groups have been rated as a 'C' category, although some are rated slightly more highly for their amenity value and attract a 'B' rating.
36. The intention is to protect the trees during the construction process through measures such as tree protection fencing and it is intended that they will be retained, largely at the end of gardens of the new dwellings. However, owing to the construction requirements and/or future relationship of four specific properties to said trees, the proposal would involve works to two tree groups through either re-layering or crown reductions by 3 metres, and 3 individual trees would also need to be crown reduced. It is acknowledged that despite these works, the gardens belonging to Plots 1 and 3 will still be affected by shading from trees.
37. The initial crown reductions to tree Nos 1, 2 and 3 are not a particular concern as the trees have already survived this form of management in the past. However, it appears that this form of management would be needed on an ongoing basis, perhaps exacerbated by the close proximity of Plot 1 which

would have its garden to the south, backing onto these trees. Overall, this relationship is indicative of a compromised design solution where the effects of shading would be real and gives rise to the question as to whether an alternative solution would be more appropriate.

38. The extent of works required to group 6 (G6) to facilitate Plot 3 and to G7 to facilitate plots 10 and 19, also appears to indicate a degree of compromise where the trees have to be adapted to suit the development and where there would be a risk to the longevity of these trees given the likely desire of future occupiers' to have useable, largely unshaded gardens and to not perceive the trees as being too close to their respective houses.
39. Though these compromises are limited in scale and number and the affected trees not particularly high value, there would still be likely to be a deteriorative effect from the proposal that which would conflict with JLP Policy DEV28.

Surface Water Drainage

40. Amongst other things, Policy DEV35 of the JLP seeks to ensure that development incorporates sustainable water management measures to reduce water use, and increase its reuse, minimise surface water run-off, and ensure that it does not increase flood risks or impact water quality elsewhere. It goes on to state that surface water should be discharged in a separate surface water drainage system, which should be discharged according to the drainage hierarchies set out in the Plymouth and Devon Local Flood Risk Management Strategies.
41. From the interested party comments and evidence submitted with the appeal, there is a clear need to ensure that a workable sustainable urban drainage system is incorporated within the development and not considered an afterthought. The solution devised for the site changed the scheme from a 22 dwelling to a 21 dwelling proposal and has, following liaison between the appellant and Lead Local Flood Authority, is considered to be acceptable subject to planning conditions.
42. On the basis of the submitted details and subject to conditions, the scheme would incorporate adequate surface water drainage measures to comply with JLP Policy DEV35.

Carbon Saving Measures

43. Policy DEV32 of the JLP requires a demonstration that a development will secure 20% carbon reduction measures above the requirements set out in the Building Regulations. Whilst some measures were included as part of the original scheme, it is not clear whether they achieved the 20% policy requirement.
44. An Energy Statement (May 2022) was submitted as part of the appeal referring to the 21 dwelling scheme setting out how the 20% savings would be achieved.
45. Subject to compliance with a related planning condition, the development would include adequate carbon reduction measures and thus comply with JLP Policy DEV32.

Unilateral Undertaking

46. The unilateral undertaking made as a deed under S106 of the Town and Country Planning Act would secure the tenure, affordability and eligibility criteria relating to the 7 affordable dwellings (36%) in the context of Policy DEV8 of the JLP, which requires 30% affordable housing from such schemes. The UU requires that an affordable housing scheme would be submitted to clarify which dwellings would be allocated as either those of a social rented tenure (4 No) or intermediate sale tenure (3 No).
47. The provision of affordable housing is the sole purpose of the UU and I consider that it would be directly related in scale and kind to the development given the requirements of Policy DEV8 which requires at least 30% affordable housing. As the 30% requirement would result in 6.3 of 21 dwellings, the number has logically been rounded up to 7 dwellings, rather than there being a specific intention to exceed the Policy requirement. All the same, the delivery of affordable housing is a benefit which I consider further below.

Planning Balance and Conclusion

48. The proposal would give rise to two main harms in relation to its failure to address an imbalance in the local housing stock and its effects on the character and appearance of the area. Taken together, these aspects result in the scheme being in conflict with the development plan when read as a whole.
49. The absence of harms in relation to highways, surface water drainage and carbon saving measures, which could be addressed by way of planning condition, are of neutral effect on the overall balance.
50. The social and economic benefits of the scheme would result from the provision of new housing which would help to maintain the vitality of the rural communities, support local services, boost the local housing supply and enhance access to housing. The affordable housing component would be a notable benefit in this regard, with 7 local individuals/families directly benefitting from the opportunities created by the scheme. The construction phase of the development would also generate economic benefits to the area, albeit of a more time-limited nature. Collectively, these benefits attract modest weight.
51. However, the development plan is the starting point for determination of the appeal and none of the policies are deemed to be out of date through an absence of a five year housing land supply or otherwise. In my view, the modest benefits of the scheme do not outweigh this conflict and there are no other considerations of such materiality, including the provisions of the National Planning Policy Framework, that indicate that a decision should be taken other than in accordance therewith.
52. For the reasons set out, the appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR