



Appeal Decision

Site visit made on 28 March 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 April 2023

Appeal Ref: APP/W1145/W/22/3297230

Land south of Fairfield, Ashwater, Beaworthy, EX21 5EQ

- 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 approval of details required by a condition of a planning permission.
 - The appeal is made by Mr Graeme Barriball of Roundchase Ltd against Torridge District Council.
 - The application Ref 1/0660/2021/REMM, dated 4 June 2021, sought approval of details pursuant to condition No 1 of a planning permission, Ref 1/0478/2017/OUTM granted on 24 September 2018.
 - The development proposed is outline application, with all matters reserved except access, for circa 22 dwellings together with space for community use and associated works (Bat Activity and Emergence Survey).
 - The details for which approval is sought are: Reserved matters application for 22 dwellings pursuant to application 1/0478/2017/OUTM.
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Decision

1. The appeal is dismissed, and the application is refused.

Application for costs

2. An application for costs was made by Mr Graeme Barriball of Roundchase Ltd against the decision of Torridge District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal results from the Council's failure to determine the application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, I note the assessment and conclusions submitted by the Council during the appeal. These include a reason for refusal that it would have used had it determined the application. This has informed the main issue of the appeal.

Main Issue

4. Whether the submitted details demonstrate that the proposal would provide an adequate means of surface water disposal.

Reasons

5. The Council's position is informed by the comments of its Lead Local Flood Authority (LLFA). The LLFA has raised concern regarding the methodology to manage surface water at the site, and in particular whether sufficient information has been provided to demonstrate a satisfactory solution. The

appellant advises that the previous attenuation option, as an alternative to the infiltration system, is not achievable. Therefore, the Council is of the view that as the drainage provisions form part of the proposed layout they must be considered in full as part of this reserved matters application.

6. The LLFA considers it necessary to undertake further infiltration testing at a depth representative of the proposed permeable paving. Without this the LLFA is of the view that it cannot be confident that the infiltration system would work as it has not been demonstrated that the permeable paving would be achievable. Layout is a reserved matter that needs to be agreed as part of the scheme if the appeal is to be allowed. The LLFA suggests that the results of further testing may require a revised layout.
7. It is suggested that the underlying strata is complex. In this respect it is not clear how the trial pit locations were chosen, and there is the potential that the proposed permeable paving would not perform as intended. If this would be the case, then excess surface water may pass over exceedance routes more frequently than anticipated.
8. The proposed solution utilises an existing drainage ditch that runs just inside the site boundary adjacent to the rear gardens of Nos. 14 and 15 Barton Court. At my visit I observed that these gardens are terraced and fall significantly from the level of the site to the lower level of the dwellings. Residents here report significant issues with flooding and surface water, and at the time of my visit the lower levels of these gardens were sodden.
9. The existing ditch is adjacent to the highest parts of these gardens with the potential for excess surface water to find its way to their lower levels. I note that the Council seeks re-assurance that infiltrated surface water from the site would not re-emerge downslope and is aware of an existing run off issue in the area that should not be exacerbated by the proposal.
10. On the basis of this site specific situation, the matter of ensuring that a thoroughly considered system is prepared at this stage is essential and would give an appropriate degree of certainty to the occupiers and owners of nearby land. This should be informed by a thorough understanding of the characteristics of the site and how it relates from a geotechnical perspective to areas of land beyond the site, to ensure that the proposed layout is feasible.
11. It is suggested that the proposed mitigation exceeds the modelled exceedance flows and thus goes beyond the minimum requirement in response to local concerns. However, without the additional information requested by the LLFA it is not possible to be sure that the designed system is sufficient.
12. The appellant is of the view that a condition could be used to require further infiltration testing. However, as there is a lack of alternative means of surface water disposal the Council does not consider this appropriate given the potential implications that a re-designed scheme may have on the layout of the development.
13. I note the appellant's reference to a decision at Beaford¹, where the Council imposed a planning condition to require the submission of a programme of ground water monitoring, at the request of the LLFA. This appears however to be a case where there was an alternative to the infiltration option put forward

¹ Council Ref: 1/0407/2019/FULM

in the form of an above ground attenuation feature that would collect water prior to restricted discharge into a ditch. The same cannot be said for the appeal proposal. As such, the approach that the Council took in this case does not appear to be suited to the appeal proposal, where no such alternative solution exists.

14. In any case, such matters often vary significantly between sites. In this case, surface water run off from the site is a significant matter locally, and no alternative solutions to infiltration are put forward. The proposed solution for surface water disposal is integral to the proposed layout. The layout includes limited areas that would be outside a domestic curtilage. Option 2 of the submitted Flood Risk Assessment² shows the necessary scale of an attenuation scheme at the site as an alternative. An equivalent scheme could not be accommodated within the proposed layout without significant amendment. On this basis, if the outcome of further site investigation is that an infiltration solution at the site is not viable it would be inevitable that the layout would need to change. The matter therefore goes beyond that which can be reasonably controlled by a condition.
15. In summary, the details submitted are insufficient to prove that an adequate means of surface water disposal can be provided for, which can be accommodated within the proposed layout. The proposal is therefore contrary to Policies ST03, DM02 and DM04 of the North Devon and Torridge Local Plan 2011-2031 (LP), which together seek to ensure that development is designed to minimise flood risk and provide effective water management.

Planning Balance

16. The proposal would conflict with the development plan, as it would be contrary to Policies of the LP which seek to ensure that development is designed to minimise flood risk and provide effective water management.
17. The tilted balance set out at Paragraph 11d) of the National Planning Policy Framework (the Framework) is engaged as the Council is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). As a result, where the policies are out of date, which would be the case where a Council cannot demonstrate a 5YHLS, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
18. The proposal would align with the Framework where it seeks to significantly boost the supply of housing, including affordable housing which the proposal would deliver in excess of the LP requirement. There would be some economic benefits arising from the proposal during the construction process and from future occupants accessing local services and facilities. These benefits carry considerable weight, particularly the delivery of 22 dwellings in the context of the Council's 5YHLS position.
19. The proposal would however fail to comply with the Framework insofar as it seeks to protect people and property from all sources of flooding, including surface water flooding, and ensure that flood risk is not increased elsewhere by a proposal. In this case, the submitted details are insufficient to prove that

² JRC Consulting Engineers Flood Risk Assessment

adequate means of surface water disposal can be provided that would be sufficient to protect the future occupiers of the appeal site, their property, and those who live close to the appeal site on land that is at a lower level and already adversely affected by surface water flooding. This is an important matter that should attract significant weight. In considering it alongside the benefits in the context of the Framework I find that the adverse impacts of allowing the development would significantly and demonstrably outweigh the benefits.

Conclusion

20. The proposal would conflict with the development plan and there are no other considerations that outweigh that conflict. Therefore, the appeal should be dismissed, and the application refused.

A Tucker

INSPECTOR