



Appeal Decision

Site visit made on 28 February 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2024

Appeal Ref: APP/U1105/W/23/3326500

Land on the west side of Down Close, Newton Poppleford, Devon EX10 0JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr Tony Bowden of Morrish Homes against the decision of East Devon District Council.
 - The application Ref is 22/2779/PIP.
 - The development proposed is for the erection of up to nine no. dwellings (1 no. minimum, 9 no. maximum).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or 'permission in principle' stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of dwellings as part of the application. In this instance, permission has been sought for the erection of a minimum of one and a maximum of nine dwellings at the appeal site and I have determined the appeal accordingly.
4. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
5. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became "National Landscapes" (NLs). I have therefore made reference to NLs in my Decision and specifically referred to the East Devon AONB as the East Devon National Landscape (EDNL). However, for the avoidance of doubt, the legal designation and policy status of these areas are unchanged and I have proceeded on this basis, continuing to refer to the AONB where relevant.

Main Issues

6. The main issues in this appeal, which relate to location, land use and amount of development, are:
- Whether the appeal site is a suitable location for the proposed development with reference to the spatial strategy in the development plan and in terms of access to services and facilities;
 - The effect of the proposed development on the character and appearance of the area including the East Devon National Landscape; and
 - The effect of the proposed development on the use of best and most versatile agricultural land (BMV).

Reasons

Location

7. The appeal site lies outside the built-up area boundary (BUAB) of Newton Poppleford as identified in the Newton Poppleford and Harpford Parish Neighbourhood Plan 2020-2031 made November 2020 (NP). Policy H3 of the NP only permits residential development outside the BUAB where it complies with the stated criteria. However, the appeal proposal does not fall within any of the criteria listed and therefore a conflict with Policy H3 of the NP would occur.
8. Although not referred to in Council's first reason for refusal, my attention has also been drawn to Strategy 7 of the East Devon Local Plan 2013-2031 adopted January 2016 (LP). Strategy 7 sets out the over-arching policy of constraint for development outside BUAB's, only permitting development which is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape qualities within which it is located. For reasons that will become apparent, the appeal proposal would not result in landscape harm. However, the proposal would conflict with Strategy 7 of the LP as it would not accord with a Local or Neighbourhood Plan policy which expressly permits residential development in this location.
9. The appeal site is on the south-western edge of Newton Poppleford and therefore fairly remote from the range of local facilities and services on the High Street. The A3052 High Street is particularly well trafficked and narrow in places. It would not be an attractive proposition for cyclists since it is busy and for pedestrians, there is no footway in places. There is a footpath which runs to the south of and parallel with, the High Street. This is unlit, largely unsurfaced and lacks natural surveillance such that it would not be particularly attractive nor accessible to all users.
10. I walked the route indicated by the appellant in their statement, which diverts from the footpath into the new King Alfred Way estate. This section is paved and lit and for this reason I agree that some people would choose to take this route. However, this only by-passes a section of the footpath and does not address the concerns I set out above. I also found that it took approximately 15 minutes, walking at a brisk pace, to reach the shops and services centred around the post office on the High Street and that gradients on part of the

route would be tricky for some users. Notwithstanding the documents I been referred to by the appellant and the Council, the National Design Guide¹ defines a walkable distance of no more than ten minutes (800 metres). The appeal site lies somewhat beyond this.

11. I have been provided with details of a number of bus services operating from bus stops close to the site between Exmouth, Sidmouth, Seaton, Honiton and Exeter. These indicate hourly services leaving Newton Poppleford early in the morning and returning in the evening with some services operating on a Sunday and bank holidays. I consider this to be a reasonable level of connectivity with other larger settlements but the frequency of the service means it is unlikely to be used by residents to access facilities in the village.
12. Taken together, I conclude that the appeal proposal would introduce new housing outside the BUAB in a way which would not adhere to the countryside policies of the development plan. This would harmfully undermine the spatial strategy for the location of housing contained in the development plan. In addition, whilst there would be opportunities available for residents to use public transport, cycle or walk to local services and facilities, these are not such attractive propositions as to persuade people out of their cars. This view is shared by the Inspector considering the previous appeal at the site². As such, most trips within the village would be undertaken by car. This is made more likely by the availability of a public car park on Station Road and at the playing fields and sports pavilion.
13. I therefore find conflict with Strategy 7, Strategy 5B and Policy TC2 of the LP and Policy H3 of the NP which seek to protect the countryside and promote sustainable modes of travel and minimising the need to travel by car.

Character and Appearance

14. The appeal site is located in the lower half of a field on the south-western edge of Newton Poppleford. The field slopes down from west to east so development would be in the lower half of the field and accessed from the existing development of mainly bungalows known as Down Close.
15. The appeal site is located within the East Devon National Landscape (EDNL) and Landscape Character Type LCT 3B 'Lower Rolling Farmed and Settled Valley Slopes'³. This describes a gently rolling landform, sloping up from the valley floor, being pastoral farmland often with a wooded appearance. It goes on to describe that it is a relatively enclosed landscape with some parts feeling well settled. This is consistent with my own observations during my visit to the appeal site and the viewpoints provided by the appellant⁴. I also viewed the site from the lane to the south of the appeal site.
16. The characteristics described above mean that views of the site are limited. However, development on the appeal site would be clearly visible from Down Close and its junction with Exmouth Road. Due to the topography of the site, dwellings would appear to tower over the bungalows below. However, the Council could secure bungalows at technical details stage and excavations to

¹ As referred to in the National Planning Policy Framework

² Appeal Ref: APP/U1105/A/14/2229080

³ Taken from East Devon and Blackdown Hills Landscape Character Assessment 2019

⁴ PV1, PV2 and PV3 in the Landscape and Visual Impact Appraisal dated December 2022 and Landscape Rebuttal dated July 2023 by Clark Landscape Design

reduce finished floor levels. Whilst this may result in fewer units being provided on site, the development would then be seen in the context of the existing bungalows on Down Close. Being set against the retained orchard and rising land behind, they would not protrude above the skyline such that the gently rolling landform and rural setting of the village could still be appreciated.

17. The proposed development would also be visible from Monkey Lane and the lane to the south of the appeal site. However, this would be at a distance and the intervening mature trees and established hedges would provide a good degree of screening. Further screening by way of a landscaping scheme could be secured at technical details stage. From higher ground to the east, the proposed development would be largely undiscernible.
18. I have had regard to the previous appeal decision at the site. However, this related to a larger site area including the higher ground to the west. The scheme also included a mix of bungalows and houses and the loss of the orchard. In addition, since the previous appeal, a Tree Preservation Order (TPO) has been confirmed protecting the existing orchard adjacent to the appeal site and mature trees on the boundaries of the appeal site. This gives a degree of certainty regarding the level of screening they can provide. Together, these are a material change in circumstances since the previous appeal.
19. Drawing this main issue together, I conclude that the appeal proposal would not have a harmful visual impact and the landscape character would be preserved. I have had regard to the purpose of conserving and enhancing the natural beauty of the AONB⁵ and Paragraph 182 of the National Planning Policy Framework (the Framework) which requires that I give great weight to conserving and enhancing landscape and scenic beauty in the AONB. In doing so I have concluded that there would be no conflict with Strategy 46 and Policy D1 of the LP and Policy EP1 of the NP which seek to conserve, enhance and prevent harm to the distinctive landscape characteristics of the area. I also conclude that there would be no conflict with Strategy 7 of the LP but only insofar as the proposal would not harm the distinctive landscape qualities.

BMV

20. The Framework clarifies in its glossary at Annex 2 that BMV land equates to land falling within grades 1, 2, and 3a of the Agricultural Land Classification. The Council identify that the appeal site is classified as Grade 1 and 2.
21. The appellant's submissions include an Agricultural Land Classification Report⁶ which concludes that the appeal site consists of Grade 3b agricultural land. This is based on desktop research, analysis of soil samples and general features such as the gradient of the site. The methodology and findings of the assessment have not been disputed by the Council.
22. Agricultural Land Classifications are broad brush and wide sweeping and not suitable for the definitive classification of individual fields or sites. Interested parties have stated that the adjacent land has been successfully organically farmed and has comparable topography to that of the appeal site. However, in the absence of substantive evidence to the contrary, I find the appellant's site-specific assessment compelling evidence. As such, there would be no conflict with Policy EN13 of the LP which seeks to conserve and protect the highest

⁵ Section 85 of the Countryside and Rights of Way Act 2000

⁶ By Landscape Land and Property Ltd dated June 2023

grades of agricultural land or Paragraph 180 of the Framework which states that planning decisions should take account of the economic and other benefits of BMV.

Other Matters

23. The appeal site is within the zone of influence of the Exe Estuary Special Protection Area (SPA) and Ramsar site and the East Devon Pebblebed Heaths Special Area of Conservation (SAC) and SPA. The proposed development falls within the scope of the South-East Devon European Site Mitigation Strategy (the Mitigation Strategy) as relevant development. Given that the proposal is for additional housing and its proximity to the SPA and SAC, there is a reasonable likelihood that it would be accessed for recreational purposes by future occupants of the proposed development. This additional activity would have the potential, either alone or in combination with other development in the area, to have a likely significant effect on the European sites.
24. The Council and its neighbouring authorities have developed the Mitigation Strategy to deliver measures to address direct and in-combination effects of recreational disturbance on the SAC and SPA. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling collected via CIL⁷. In addition, there are a range of non-infrastructure mitigation measures such as education, communication and monitoring that would be funded via a planning obligation. As set out in the PPG⁸, planning obligations cannot be secured at the permission in principle stage but the landowner has provided a Section 111⁹ undertaking and paid the required contribution.
25. Had I been minded to allow the appeal I would have had to seek the views of Natural England as to whether the submitted payment would be sufficient to avoid or reduce impacts in order to maintain the integrity of the SAC and SPA and its qualifying features. However, I am dismissing the appeal so the impacts will not arise. Consequently, it is not necessary for me to consider the proposal any further in respect of the Conservation of Habitats and Species Regulations 2017.
26. I have had regard to various comments of interested parties including flood risk, the impact on wildlife, prevention of damage to trees protected by a TPO, highway safety and visibility and the living conditions of existing occupiers of Down Close. However, these are not matters which would fall within the scope of consideration for the first stage of permission in principle. In any event, I have identified harm in respect of the main issues.

Planning Balance and Conclusion

27. The Council cannot demonstrate a five year housing land supply. The appellant advises that supply sits at 4.68 years and the Council have not disputed this. In such circumstances Paragraph 11 of the Framework states that permission should be granted unless the adverse impacts of doing so would significantly

⁷ Community Infrastructure Levy

⁸ Paragraph:022 Reference ID: 58-022-20180615

⁹ S111 of the Local Government Act 1972

and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole¹⁰.

28. The appeal proposal would conserve the natural beauty of the AONB and would not lead to the loss of BMV land. However, the location of the appeal scheme relative to services and facilities would not promote regular walking, cycling and public transport use. I have found that harm would result from the failure to promote sustainable transport and realise the health benefits associated with such modes of travel. These are important aims of the Framework and I afford the adverse impacts of the proposal significant weight.
29. I have considered the social, environmental and economic benefits arising from the construction of up to nine dwellings including the contribution they would make to the Council's housing supply, the benefits arising from the construction and occupation of the dwellings to the economy and biodiversity net gains. Together I have given these moderate weight.
30. Accordingly, the adverse impacts of the proposal would significantly and demonstrably outweigh its overall benefits. This does not indicate that the appeal should be determined otherwise than in accordance with the development plan.
31. The Framework makes it clear that where the tilted balance is engaged, the adverse impact of allowing development that conflicts with a NP is likely to significantly and demonstrably outweigh the benefits, provided that the criteria of Framework Paragraph 14 are all satisfied. In this case, the NP is less than five years old so Paragraph 14 a) is satisfied. Paragraph 14 b) requires that the NP contains policies and allocations to meet its identified housing requirement. The NP does not contain any allocations for housing but policies H1, H2, H3 and TD1 permit residential development within and adjacent to the BUAB. The appellant has not provided substantive evidence to support their claim that these do not meet Newton Poppleford's identified housing requirement. Even if I found in favour of the appellant on this point and Paragraph 14 was not engaged, it would not alter the significant weight I have attributed to the harm I have found in respect of the failure to promote sustainable transport, in my planning balance.
32. The proposed development is contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal is dismissed.

Alison Fish

INSPECTOR

¹⁰ Given my findings in respect of character and appearance, there are no policies in the Framework that give a clear reason for refusing the proposal