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# Appeal Decision

Site visit made on 28 October 2024

**by A J Sutton BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 November 2024**

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**Appeal Ref: APP/U1105/W/24/3336475**

**Land East of Sidmouth Road, Ottery St Mary EX11 1PW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by ALD Developments against the decision of East Devon District Council.
  - The application Ref is 22/1973/MOUT.
  - The development proposed is described as 'Outline permission for a residential development of up to 63 dwellings and associated infrastructure.'
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The planning application was submitted in outline and the application form makes it clear that all matters, except access, are reserved at this stage. The appeal proposal is considered accordingly, and the proposed Illustrative sketch Site Layout is treated as indicative only.
3. The Council, through this appeal process, has indicated that it no longer contests reasons for refusal 3 and 4 on its decision notice. These relate to protected habitats and affordable housing, and I will deal with these matters in due course.
4. Attention is drawn to an emerging plan. This has not yet progressed to the submission stage, and as such there are likely significant matters that are not yet resolved. Also, there is a high degree of uncertainty that this draft plan would be submitted in its current form. Given these factors, the weight that policies of this emerging plan attract is very limited in this case.

## Main Issues

5. The main issues are:
  - The effect of the proposal on the character and appearance of the area, and
  - Whether the proposal would be acceptable in respect of the loss of agricultural land.

## Reasons

### *Character and Appearance*

6. The appeal site is a collection of fields which at the time of the site visit comprised grazing land. The fields are bounded by mature hedgerows and some trees. Although it is close to the settlement of Ottery St Mary, development is sparse and sporadic in

the immediate setting of the site. The land rises from Sidmouth Road, with a sense of openness increasing on the higher ground of the appeal site.

7. Properties on the eastern side of Sidmouth Road thin out when leaving Ottery St Mary. Beyond this fringe of the settlement and leading to the appeal site, pavements come to an end and the road, lined with a hedgebank, narrows, marking a clear transition from the suburban edge of the town into the surrounding countryside. Comprising undulating fields and with sparse development at its boundary, the rolling farmland of the appeal site appears to contribute positively to the character of the countryside setting of the town.
8. Dwellings at this edge of Otter St Mary are mixed in style but appear largely 20<sup>th</sup> Century, with a distinct suburban appearance. Near the appeal site this includes dwellings perched on Longdogs Lane and the relatively new development, west of Sidmouth Road, which includes pavements and streetlamps, opposite Gerway Lane. Those properties are separated from the appeal site either by fields or the road. Given this degree of separation along with the starkly contrasting undeveloped quality of the appeal site, it was observed that those existing suburban developments have limited visual influence over the character of the appeal site and its immediate context.
9. The proposal would result in a new access onto Sidmouth Road. This would require the removal of a significant section of the existing hedge on this stretch of the road. Work to the carriageway near this new access would be necessary to address highways issues, and this would include the creation of a pavement and alterations to the priority of vehicles using this part of Sidmouth Road. A bollard and additional road signage would also be part of these works. Even with vegetation and trees retained near the new access, these substantial changes would introduce features that would considerably alter the existing relatively simple rural road.
10. The submitted site layout is indicative. However, with up to sixty three dwellings proposed, much of the existing fields would be covered by built forms. While acknowledging that layout is a reserved matter, it is reasonable to assume that this proposed quantum of dwellings would need significant internal roads, parking spaces and enclosed private gardens. With these features, along with several dwellings, the development would have a distinct suburban appearance.
11. Indeed, the quantum of development would need to be significantly reduced for this not to be the case. This substantial visual change would be visible from the new access even if some hedging was retained along the road. The concentration of built form, roads and other residential features would appear considerably at odds with the sparse development that currently characterises this rural area. Designing the dwellings to reflect existing properties in the wider area would not address the incongruous concentration of development at the site. Nor would it resolve the out of keeping suburban qualities outlined above.
12. The evidence suggests that the lower land would need to be set aside for drainage and to address flood risk. However, the suburban changes outlined above would still likely affect around three quarters of the site given the magnitude of the development proposed in this case. With this coverage of development, the existing environmental qualities and prevailing rural character of this site would be largely lost.
13. Landscaping buffers are proposed, which could be secured by condition. However, while a hedgebank on the eastern boundary may have some effect in filtering views of the development, landscaping at the north boundary would not provide effective

screening given the topography of the land at this aspect. Moreover, as already stated landscaping would not adequately minimise the extensive visual change that would occur at the site access and along the road.

14. The appellant's Landscape and Visual Impact Assessment states that this development would, similar to the new development on the western side of the road, be seen as an extension to Ottery St Mary. However, the Gerway Close development is near to Claremont Field, with only a slither of green space dividing new and previously existing properties at the edge of the settlement.
15. In this case, however, the appeal site is surrounded by scarce development such that the existing substantive edge of the town, north of the site, appears to be Longdogs Lane and St Marys Park. This proposed development would be separated from that existing edge of town development by fields. Therefore, unlike Gerway Close, when viewed locally, this scheme would appear oddly detached development, substantially encroaching into the countryside, as opposed to forming part of the town.
16. The appeal site is located approximately one mile from the East Devon Area of Outstanding Natural Beauty (AONB). The boundary of the AONB roughly aligns with the wooded ridge of higher land to the east and south of the appeal site. From this ridge, the town is seen in distant views from this protected landscape. While the visual harm to the character of the appeal site would be clearly discernible locally, given this distance, the changes at the site, from the edge of the AONB, would be seen against existing development. As a result, the special qualities that contribute to the landscape and scenic beauty of this part of the AONB would be conserved and its setting would not be significantly harmed by this development.
17. Attention is drawn to a recent permission to improve the site access along Sidmouth Road. While this is near the appeal site, that access relates to a farm and therefore unlike this residential development is rural in character. My findings are not altered accordingly.
18. In conclusion on this matter, the proposal would have a harmful effect on the character and appearance of the area. While this visual harm would be localised to the south of the town, for the reasons outlined, this harm would be substantial in this locale. In this regard the proposal would conflict with Strategy 7, Strategy 46 and Policy D1 of the East Devon Local Plan 2013-2031 (Local Plan) and Policy NP1 of the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill (Neighbourhood Plan). These Policies, in respect of development in the countryside, collectively, amongst other matters, seek to maintain the rural character of the area. Also, they require that development will need to be undertaken in a manner that is sympathetic to and helps conserve and enhance the quality and local distinctiveness of the natural landscape character of East Devon.

#### *Agricultural Land*

19. Policy EN13 of the Local Plan states that the best and most versatile (BMV) agricultural land (Grades 1,2 and 3a) will be protected from development. A Land Classification Report has been submitted with this proposal and takes account of Ministry of Agriculture, Fisheries and Food Revised guidelines and criteria for grading the quality of agricultural land 1988 (ALC Guidelines). Following the inspection of the land and carrying out soil samples over the three fields, the Land Classification Report indicates the land is Grade 2. However, the Report goes on to state that the fields are small and 'bigger' farm machinery would damage hedges when accessing the land

from Gerway Lane. In turn, it is stated that the site is restricted to grass capable of being grown on Grade 3b.

20. It is appreciated that ALC is based on more than soil samples. In respect of other factors, the Land Classification Report highlights the site gradient is level or gently sloping and is reasonably sheltered. While it is indicated that there is a limited water supply there is a water trough in one of the fields.
21. Also, although the author of the Report concludes that Gerway Lane is too narrow for large machinery this is contradicted by a farmer of the neighbouring field. This may be anecdotal but nonetheless the farmer's comments are referenced in the Report. This appears local knowledge from an individual that has practical experience of using Gerway Lane and on this basis, it seems reasonable that this should attract some weight. Moreover, no convincing evidence has been advanced to dispute this local farmer's comments on this matter.
22. Field size and site access are not identified as a site limitation in the ALC Guidelines. This aside, the appellant's Report highlights that where there are practical constraints on cropping and land management, a pattern limitation is said to exist, and this seems a fair assumption. However, the evidence before me indicates that soil and site conditions do not vary significantly. Moreover, while the land is currently used for grazing, no convincing information has been presented to confirm that the land could not yield a wide range of agricultural and horticultural crops, that yields would be low or that the use of the land is limited to grass. In light of this, even if it is accepted that the access and field size reduces the versatility of the land in question, I remain unpersuaded by the submitted evidence that the site is not BMV land.
23. Policy EN13 of the Local Plan goes on to state that permission for development affecting such land will only be granted exceptionally if there is an overriding need for the development and either: sufficient land of a lower grade is unavailable or available lower grade land has an environmental value recognised by a statutory designation and outweighs the agricultural considerations, or the benefits of the development justify the loss of high quality agricultural land.
24. Overriding need is not defined in Policy EN13, and this requirement appears a somewhat higher test than the provision set out in the National Planning Policy Framework (The Framework). In respect of this matter the Framework requires decisions should contribute to the natural and local environment by amongst other matters, recognising the wider benefits of the BMV agricultural land.
25. The Framework goes on to clarify plans should allocate land with the least environmental value where consistent with other policies of the Framework. It is also stated, at footnote 62, where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality of land should be preferred to those of higher quality. This provision of the Framework is generally reflected in the requirements of Policy EN13. National guidance also advises account should be taken of smaller losses (under 20ha) [of BMV land] if they are significant and decisions should avoid unnecessary loss of BMV land.
26. The proposal is defined as a major development and would be significant in this regard. As a housing scheme, the development would result in the loss of land for agricultural uses in the long term. Also, given the limited information submitted the appellant has failed to demonstrate in this case that the appeal site is not BMV land or that sufficient land of a lower grade is unavailable for this development.

27. In light of this, I find there is insufficient information to conclude that the proposal would be acceptable in respect of the loss of agricultural land. The proposal would not accord with Policy EN13 of the Local Plan in this regard. I will address the matter of benefits in the following section.

### **Other Matters and Planning Balance**

28. Strategy 34 of the Local Plan sets out the affordable housing targets for the district. This Policy requires a target of 25% dwellings in residential development in stated areas. Outside of the areas listed, and this includes the appeal site, 50% of dwellings shall be affordable. The Policy goes on to clarify of this provision 70% should be social or affordable rental accommodation and 30% intermediate or other affordable housing.
29. The appellant, through this appeal process, has submitted a signed and dated legal agreement made under Section 106 of the Town and Country Planning Act 1990 as amended. Schedule 1 of the agreement binds those with title to the appeal site, and their successors, to make provision for 50% of the dwellings in the development to be affordable housing units, comprising seven shared ownership, sixteen social rented and eight first homes.
30. Strategy 43 of the Local Plan relates to the district's open space standards. Developments of 50 – 199 dwellings will be required to provide amenity open space, and children and youth play space on-site as per standards set in the Local Plan. While indicative only, the illustrative site layout shows that even with the number of dwellings proposed there would be space in the site for open space provision as required by this Policy. Also, Schedule 2 of the appellant's legal agreement makes provision for on-site open space covenants with the Council.
31. The Council's Compliance Statement indicates there is no mechanism to ensure ongoing maintenance of the open space, and this is in conflict with Strategy 43. However, Schedule 2 of the legal agreement has provision for a maintenance period and with this commitment I am content that this conflict is resolved.
32. I find the legal agreement to be legally sound and in respect of affordable housing and open space provision this obligation satisfies the tests set out in relevant Regulations and national guidance. Consequently, the proposal would accord with Strategy 34, Strategy 43 and Strategy 50 of the Local Plan and Policy NP14 of the Neighbourhood Plan with regards these matters.
33. The Council has not raised concerns about flood risk, highway safety, adequate parking or impact on neighbouring residents, subject to approval of reserved matters and conditions. However, even if I agree with this, development should be acceptable in these terms and these factors do not therefore alter the planning balance in this case.
34. The Council's latest position statement suggest it has a housing land supply (HLS) of 4.5 years. The appellant asserts that the HLS is only 4.28 years, however limited information has been submitted to support this assertion. This aside, the Council's position statement indicates that the annual requirement is based on local housing need (standard method) and no convincing evidence has been presented which would lead me to question that this statement does not reflect the latest national guidance on this matter. The basic annual requirement is stated as 910 dwellings and the shortfall from a 5 year HLS is indicated as 457 dwellings which is significant.

35. The evidence also indicates that the latest published Housing Delivery Test shows the delivery of housing in the district was above 75% of the housing requirement over the previous three years.
36. The current Local Plan is over five years old and the Council states that as it has published an emerging local plan under the Regulation 18 stage, in line with Paragraph 226 of the Framework, it is only required to demonstrate a 4 year HLS. This is disputed by the appellant, who contends that the Regulation 18 plan in question does not include proposed allocations.
37. While not referenced as 'proposed', Strategic Policy 22 lists potential sites for allocation at Ottery St Mary. These are categorised as preferred or second choice sites. Also, some sites have been rejected by the Council. Describing the emerging plan as 'draft' and identifying a selection of potential sites is not surprising at this early stage of plan preparation, and as outlined previously there is a high degree of certainty that this emerging plan will change. Nevertheless, this early stage emerging plan includes preferred allocations that would work towards meeting housing needs in the district; these allocations are proposed by the Council and are shown on a Policies map.
38. Attention in relation to this matter is drawn to an appeal decision for development in Dorset. In that case, while the background information from a previous Regulation 18 process was being drawn upon, the process of that plan was at that time yet to be started in earnest. That appeal was in a different district where the circumstances are distinctly different to that outlined above for East Devon. My findings are not altered by that decision accordingly.
39. In any event, housing land supply should not be seen as a cap and as stated in the evidence, the Council has already identified that it is vital to bolster the housing land supply in the district. To this aim, this proposal would result in up to 63 new homes, half of which would be affordable. This would make a considerable contribution to the Government's objective to significantly boost the supply of homes and to the district's annual housing requirement. The resultant supply and mix of homes, as well as provision of affordable units, would amount to considerable benefits.
40. Although located in the countryside, there would be some bus services available to future residents and it understood these services connect with railway stations and major towns. The proposed pavement would provide the option to walk to services in Ottery St Mary, which is defined as an Area Centre in the Local Plan. This accessibility to services has support in the Framework and weighs in favour of the proposal.
41. There would be economic benefits through the construction phase, contributions to the Community Infrastructure Levy and payments to the New Homes Bonus. Further economic benefits would be derived during the lifetime of the development with future occupants supporting local services.
42. The evidence advanced indicates that the proposal could result in biodiversity net gain at the site. The development could also incorporate low carbon measures and make provision for decentralised energy sources. These environmental benefits could be secured by conditions. Also, the provision of open space is required by local policy but, nonetheless this would be a significant social and environmental benefit for existing and future residents. While these benefits would be moderate given the scale of the development, they would be significant.

43. Landscaping is proposed and again this could be secured at reserved matters and through condition. Such a scheme could protect existing trees and hedges. Also, some of the existing hedges would benefit from maintenance and diseased trees may need replacing. However, there is no compelling evidence that this visually harmful development would be the only way of securing these positive outcomes, and this counters any benefit that may arise in this respect. Moreover, as already outlined a landscaping scheme could not adequately mitigate the substantial harm to the character of this area.
44. The appellant asserts that Policies of the development plan are out of date given the housing land supply situation in this district. Addressing this matter, although Local Plan Policies seek to restrict development in the countryside, criteria is provided to allow consideration of such proposals. The Policies do not therefore appear overly restrictive in this respect. In this regard the Policies reflect provisions of the Framework which seek to enhance or maintain the vitality of rural communities.
45. Also, Strategy 7 of the Local Plan and Policy NP1 of the Neighbourhood Plan seek to maintain rural character. This appears consistent with provisions of the Framework that require decisions should contribute to the natural and local environment by, amongst other matters, recognising the intrinsic character and beauty of the countryside.
46. Moreover, Policy D1 of the Local Plan requires development to be of a high quality design and locally distinctive, and this is consistent with the Framework which seeks well-designed and beautiful places. The Framework, related to this matter, highlights that good design is a key aspect of sustainable development and decisions should ensure that developments, amongst other matters, are sympathetic to local character. For the reasons set out above, this would not be the case with this proposal.
47. I have already identified some inconsistencies with Policy EN13 of the Local Plan and the Framework on the matter of BMV land. However, while aspects of the Policy appear onerous, there is some flexibility. This flexibility includes the consideration of benefits of the development. Moreover, the Policy goes on to state that if BMV land needs to be developed and there is a choice between sites in different grades, land of the lowest grade must be used except where other sustainability considerations outweigh land quality issues. This generally reflects the approach on this matter set out in footnote 62 of the Framework.
48. Even if it is accepted that there is an overriding need for this scheme and that it has been demonstrated that significant development of agricultural land is necessary to address any shortfall in housing land supply, the evidence submitted in this case has failed to persuade me that this site is a poorer quality of land and should be preferred for this development.
49. I find the Policies most relevant and important in this case to be in general accordance with the Framework. The social, economic and environmental benefits of this proposal, when considered collectively, would be considerable. However, this is set against the substantial harm to the character of the area that would occur and the conflict with Local Policy and the Framework in this regard. There would also be inconsistencies with Local Policy, the Framework and national guidance in respect of having regard to higher quality agricultural land and potential unnecessary loss of BMV land.

50. Therefore, if I was to agree that Paragraph 11 d) of the Framework is relevant in this case, I find that the substantial adverse impacts of the development would significantly and demonstrably outweigh the considerable benefits identified above, when assessed against the policies of the Framework taken as a whole.
51. The Council's officer recommended permission be granted in this case. Be this as it may, Councils are not bound to accept the recommendations of their officers.
52. The similarities regarding the planning balance for the Gerway Close development are noted. However, as already outlined, unlike that development, in this case, not only would the rural character be largely lost, but the development would also be visually set apart from the edge of the town and harmful in this regard. Therefore, even if the benefits of this proposal justify the loss of the agricultural land, substantial harm would still occur. That development is distinctly different in this regard and has not altered my findings for this reason.
53. Attention is drawn to Court judgments related to the application of development plan policies. In respect of this, Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. While there may be local policies that are not in dispute in this case, I have found that this proposal would result in substantial harm to character and conflict would arise with local policies in this regard. Also, inconsistency with policies related to BMV land have been identified. There would be conflict with the development plan when read as a whole. The material considerations identified do not indicate a decision otherwise than in accordance with the development plan in this case.
54. The appeal site is in the Zone of Influence of the East Devon Pebblebed Heaths Special Area of Conservation and Exe Estuary and East Devon Heaths Special Protection Area. A legal agreement related to this matter has been submitted. However, as this appeal is being dismissed on other grounds there is no need to address this matter.

## **Conclusion**

55. For the reasons stated above and having regard to the development plan, and material considerations, including the Framework, the appeal should be dismissed.

*A J Sutton*

INSPECTOR