



## Appeal Decision

Site Visit made on 13 July 2021

**by M Bale BA (Hons) MA MRTPI**

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

**Decision date: 21 September 2021**

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**Appeal Ref: APP/X1118/W/21/3271336**

**Land at Chivenor Cross, Chivenor, Braunton EX31 4BN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Waddeton Park Ltd against the decision of North Devon District Council.
  - The application Ref 71660, dated 15 June 2020, was refused by notice dated 12 February 2021.
  - The development proposed is up to 59 residential units and associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for up to 59 residential units and associated infrastructure at Land at Chivenor Cross, Chivenor, Braunton EX31 4BN in accordance with the terms of the application, Ref 71660, dated 15 June 2020, subject to the conditions in the attached schedule.

### Procedural matter

2. The appeal relates to an application for outline planning permission. Approval is sought for access at this stage. I have, therefore, treated the access plans as a firm part of the proposal, but all other plans as illustrative.

### Main Issues

3. The main issues are the effect of the development on the character and appearance of the area, with regard to the unspoilt character and tranquillity of the undeveloped coast; and the effect on air quality.

### Reasons

#### *Character and appearance*

4. The site is a broadly rectangular field. It lies between the A361, Chivenor Business Park, and a housing area associated with the nearby military base. There are filtered views across the site between trees alongside the A361 and also from the Tarka Trail footpath/cycle path between the site, and the adjoining housing and business park. The site is more exposed when viewed from Chivenor Cross roundabout, heading from Braunton, where open views across it clearly mark the edge of the built-up area.
5. There would, therefore, be a change to the character of the immediate area from an open field characteristic of the surrounding, undeveloped landscape to an urbanised one. That said, the existing site does not afford panoramic or long-range views across it, so the site's contribution to the surrounding

landscape character is low and visual effects associated with the loss of the countryside would be very localised. Retained and supplementary planting could leave only filtered views of housing from the A361 and Tarka Trail, which, while close to those passing along them, would be similar to those views of the existing surrounding development beyond the site.

6. The site is within the Coastal and Estuarine Zone (CEZ) designated in the North Devon and Torridge Local Plan 2011-2031 (LP). Travelling along the A361 from Barnstaple, one has an appreciation of the coast and estuary. This diminishes between Heanton Court and the site, where the area takes on a more inland character that lacks direct association with the coast. Moreover, due to its low position in the landscape, intervening housing, business park and trees there is no intervisibility between the coast or estuary and the site, or those stretches of the A361 and Tarka Trail that border it.
7. LP Policy ST09, relating to the CEZ, supports, amongst other things, development in the undeveloped coast where it does not detract from the unspoilt character, appearance or tranquillity of the area. Despite falling within the CEZ, the site is inland of the adjoining housing, business park and military base. It is also close to other recent housing development on the opposite side of the road leading to the site access. All of this surrounding development is also in the CEZ so this part of the designation does not have an undeveloped or particularly tranquil character.
8. Policy ST09 also requires that development cannot reasonably be located outside the undeveloped coast and estuary. There is no substantive evidence that other sites outside the designated area are available for development. However, the Council advise that they can currently demonstrate only 4.23 years supply of housing land and it, therefore, follows that sufficient sites elsewhere are not currently available.
9. Being an outline application, the submitted plans show little detail. However, the Council has not demonstrated any particular harm arising from the illustrative plan, nor given clear reasons why the aspirations of the National Planning Policy Framework (the Framework) or National Design Guide could not be met at reserved matters stage. A masterplan indicates how the development would respond to the site constraints and work with existing landscape features. I, therefore, have no reason to find that the proposal could not result in a high quality development.
10. With regard to the foregoing, I find that there would be no demonstrable harm to the undeveloped coast and aims of LP Policy ST09. There would be some localised visual effects associated with building on hitherto undeveloped land and extension of the urban edge. However, the similarities in appearance from the public realm to other surrounding development, and the contained nature of the site, mean that there would be no particular harm to landscape character, which LP Policy DM08A seeks to avoid.

#### *Air quality*

11. Evidence from the appellant indicated that the proposal would have a negligible effect on air quality, including at an Air Quality Management Area in Braunton, in combination with other nearby development. The Council's Environmental Health Manager accepted these conclusions. I understand that there can be significant amounts of queuing traffic through Braunton, especially at peak

holiday times and additional traffic could lead to a degradation in air quality. However, while it is said that the Council's planning committee disagreed with the position shared by the appellant and Council officers, there is no substantive evidence as to why, or that any material harm would arise from the increase in traffic.

12. I, therefore, find that the proposal would not conflict with those aims of LP Policy DM02 that seek to prevent unacceptable pollution impacts.

### **Housing policy**

13. The site is outside the defined development boundary for Braunton and Wrafton. Policy ST07 sets out a spatial development strategy for northern Devon's rural area and does not permit open market dwellings in this location. Nevertheless, due to housing delivery rates and shortfall in housing land supply, LP Policy ST21 also applies. This policy allows development outside defined settlements, subject to a general compliance with the development plan.
14. The Council's policy team describe the site as being in a sustainable location and, as it adjoins the development boundary, it would be consistent with the broad spatial strategy of the LP. Although not currently in the control of a housebuilder, there is no apparent reason that the site could not contribute to the delivery of housing in a timely manner. Even if I were to accept that some limited, localised adverse visual effects would arise, this would essentially be a consequence of development of greenfield land, which Policy ST21 clearly supports. I, therefore, find that the development plan, read as a whole, permits housing in this location.

### **Other matters**

15. I note that there are concerns amongst local residents that an increase in population would exacerbate existing traffic problems. However, there is no substantive evidence that this would not be adequately mitigated by the proposed contributions towards off-site traffic management, especially in the context of the clear opportunities to access the site by public transport, walking and cycling. There is concern about safety at nearby junctions, including Chivenor Business Park, but in the absence of any objection from the Local Highway Authority, I find that the increase in traffic would not adversely affect highway safety.
16. The Council's Heritage and Conservation Officer confirms that the site is within the setting of the grade I listed Church of St Augustine at Heanton. Its tower is high and is likely to have been intended to be seen and used as a landmark within the surrounding countryside. Its wide setting, therefore, contributes to its significance. The Officer indicates that the development would obscure some views and, as such would cause a degree of less than substantial harm to the significance of the heritage asset.
17. Nevertheless, this site makes a very limited contribution to the setting of the listed building and there would be some limited loss of the sense of openness experienced as a result of its current statement. Therefore, the development would have a very minor adverse effect on the slight contribution this open area makes to the setting of the church.

18. The preservation of the settings of listed buildings is of considerable importance and I attach great weight to the conservation of the heritage asset. However, the public benefits associated with the delivery of the proposed housing, in light of the housing land supply situation, are of very substantial weight and, in this case, outweigh the harm.
19. The proposal would prevent the development of a tourism enterprise, subject to an extant planning permission at the site. However, whether or not that would have brought greater economic benefit to the area, there is no clear indication that those plans would have come to fruition. There is no substantive evidence that the site would be susceptible to flooding, would be affected by any rising water levels in the Taw estuary or would harm protected species. These matters do not, therefore, alter my decision.
20. I understand that both Heanton and Braunton are producing neighbourhood plans, but these have not progressed to a stage that can be given meaningful weight. They do not, therefore, alter my earlier findings. Even though the site was not allocated in the local plan and an earlier application was refused, I must assess this appeal on the prevailing material considerations now.

### **Appropriate assessment**

21. The site is close to the Braunton Burrows Special Area of Conservation (SAC). Qualifying features of the SAC include mudflats and sandflats not covered by seawater at low tide, intertidal mudflats and sandflats, shifting dunes along the shoreline, shifting dunes with marram, fixed dunes with herbaceous vegetation, dune grassland, dunes with creeping willow, humid dune slacks and petalwort. The conservation objectives are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its qualifying features.
22. An increase in population from the development, in combination with other development, could lead to increased recreational pressure and adverse effects on the integrity of the SAC. The Council has developed the Braunton Burrows SAC: Mitigation strategy for future plan-led and non plan-led development with the land owner and Natural England. This is designed to avoid significant effects of recreational impacts on the SAC.
23. Natural England has advised that funding from the development should be provided to secure mitigation. This would be achieved via a planning obligation. Therefore, the proposal would secure suitable mitigation and, following appropriate assessment, I conclude that it would not result in adverse effects on the integrity of the SAC.

### **Planning obligations**

24. A Section 106 agreement would provide for an appropriate amount of affordable housing. It would also secure public open space, maintenance of surface water drainage systems, contributions to education provision, the mitigation of effects on habitats, improvements to footways, a contribution to improvements to traffic signals in Braunton, and travel vouchers. Such would mitigate adverse effects of the development on infrastructure and ensure appropriate facilities are available for future residents.
25. There is provision in the agreement for other obligations requested by the Local Highway Authority (LHA), in the event that I find them necessary to allow the

- development to go ahead. These are listed as items B to F in the agreement's highway works plan.
26. Item B is a footway to an existing bus stop on the A361. However, there is a closer, more convenient bus stop to the site entrance such that future occupiers and visitors to the site are unlikely to use the one on the A361 itself. I, therefore, find that this contribution is not necessary.
  27. Items C, E and F relate to the provision and maintenance of a new Toucan Crossing in place of an uncontrolled crossing on the A361. However, there are lit pedestrian and cycle links available via the new development on the opposite side of the road to the site access as well as easy access to the Tarka Trail providing off-road, albeit unlit, connections to Braunton and Barnstaple.
  28. While the LHA had previously indicated in correspondence with the appellant that these may not be the most direct routes to some facilities, there is no substantive evidence that pedestrians and cyclists would prefer the route via the A361, such as to necessitate upgrade to the crossing, nor that the absence of upgrade would deter pedestrian or cycle travel. Item D relates to footpath/cycleway upgrades to the Toucan Crossing, but in the absence of the crossing, this is not necessary either.
  29. For clarity then, I find that the highway works indicated on the Highway Works Plan identified as B, C, D, E and F are not necessary to make the development acceptable in planning terms. They do not, therefore, comply with the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and I give them no weight in my decision.

### **Conditions**

30. The Council has suggested that reserved matters should be submitted within one year, to ensure speedy delivery. However, that leaves little time to sell the site to a developer and prepare an acceptable reserved matters application. A short time period introduces an element of risk to the development process that could dissuade developers and ultimately prevent development occurring. I cannot be certain, therefore, that a shorter time period would facilitate an earlier contribution to housing delivery and may, in fact frustrate it. Therefore, I have imposed standard conditions in this respect.
31. To protect and enhance biodiversity, a Landscape and Ecological Management plan (LEMP) is required. Detailed landscaping proposals and the protection of existing trees, however, are reserved matters.
32. To avoid any increase in flood risk, a condition is required to secure a detailed drainage and surface water management scheme. To minimise the amount of waste produced, a waste audit statement should be submitted.
33. Conditions concerning the layout of estate roads relate to the reserved matters and the closure of the existing access is dealt with by the S106 agreement. However, as access is to be approved now, I have imposed a condition requiring all dwellings to be accessible by appropriate highway infrastructure prior to occupation, to ensure that adequate facilities exist to serve the needs of future residents.
34. To ensure that risks from land contamination to future users and neighbouring land are properly investigated and, if necessary, remediated a condition is

imposed to secure this process. To protect highway safety and living conditions of nearby residents, a construction management plan should be provided. In light of this condition, a further condition setting out specific construction hours is not required. However, to protect living conditions of future residents, details of, and any mitigation for, potential noise disturbance from the foul pumping station are required.

35. The Council has suggested a condition to secure a phasing plan. However, the site is a single land parcel and the development is not particularly large. It is not clear how a phasing plan would assist in timely delivery of particular features of the development, nor why control is required over the development sequence of the site. I have not, therefore, imposed such a condition. As the proposal is for outline planning permission and future plans showing layout will need to show the access permitted now, there is no need to impose a specific plans condition.
36. The Council has also suggested a condition limiting the number of dwellings at the site. However, while the illustrative plans show that 59 can be successfully accommodated, there is no robust evidence that this is a maximum that could be compatible with the area. The layout, including any necessary open space will be assessed as part of any reserved matters application and financial contributions towards education and SAC mitigation are expressed per dwelling in the S106 agreement. As such, the need for the condition has not been demonstrated, so I have not imposed it.
37. Nor have I imposed a suggested condition relating to the re-use of soil on the site. The suggested condition is imprecise and unenforceable as it requires the developer to only take action where practical to do so. It is not clear how such action would meet the aims of LP Policy DM08 or the Framework in any case.
38. I have made some revisions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework. In particular, a number of suggested conditions include detailed lists of information requirements. I have omitted these so that the parties can agree the precise requirements based upon relevant guidance and site circumstances at the time that the details are agreed.

## **Conclusion**

39. The site is outside the development boundary and conflicts with LP Policy ST07. However, given the housing land supply situation, Policy ST21 permits development in this location. There would be only slight, localised effects on the appearance of the area, which are a consequence of development beyond existing settlements. There would be no harm to the CEZ or overall landscape character and the less than substantial harm to the setting of the listed church is outweighed by the public benefits of the proposal.
40. Therefore, I find that the proposal accords with the development plan read as a whole and, as such, the appeal should be allowed.

*M Bale*

INSPECTOR

## Schedule

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The first reserved matters application shall include a waste audit statement which shall be approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved statement and thereafter maintained as such.
- 5) Any reserved matters application for layout shall include details of the potential noise emissions from the proposed foul pumping station, together with any necessary mitigation, to demonstrate that the pumping station will not cause unacceptable noise disturbance to the closest residential dwelling. The details and any mitigation shall be approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details prior to the first occupation of any dwelling hereby permitted and shall thereafter be maintained as such.
- 6) No development shall take place until a detailed surface water drainage plan, including for the construction phase, proposals for long term maintenance and an implementation timetable have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and thereafter maintained in accordance with the approved details.
- 7) No development shall take place until a detailed landscape and ecological management plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall demonstrate how the development proposal will contribute to a net gain in biodiversity, and the implementation and management of all landscape and biodiversity avoidance, mitigation and enhancement measures of the development. The development shall be implemented and thereafter maintained in accordance with the approved details and timings therein.
- 8) Prior to the commencement of any site clearance, groundworks or construction, the Local Planning Authority shall be provided with the results of a phase one survey for potential ground contamination. The report shall be prepared by a suitably qualified competent person and be sufficient to identify any and all potential sources of ground contamination affecting any part of the development site. Thereafter, depending on the outcome of phase one, a proposal for any phase two (intrusive) survey that may be required shall be presented to and agreed in writing by the Local Planning Authority.

Where remediation of any part of the site is found to be required, a remediation scheme shall be submitted to and approved in writing by the

Local Planning Authority. The scheme shall include details of any necessary quality assurance, verification and certification requirements in accordance with established best practice. The construction phase of the development shall be carried out in accordance with the agreed details and, where relevant, verification reports and completion certificates shall be submitted to and approved in writing by the Local Planning Authority.

Should any contamination of soil or groundwater not previously identified be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

- 9) Prior to the commencement of development, including any site clearance, groundworks or construction (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Environment Management Plan (CEMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and monitored by the developer to ensure continuing compliance during the construction of the development.
- 10) No dwelling shall be occupied until the following works have been carried out:
  - (a) The carriageway including the vehicle turning head to serve that dwelling shall have been laid out, kerbed, drained and constructed up to and including base course level, the ironwork set to base course level and the sewers, manholes and service crossings completed;
  - (b) the footways and footpaths which provide that dwelling with a direct pedestrian route to an existing highway maintainable at public expense have been constructed up to and including base course level;
  - (c) the visibility splays between the dwelling and the existing highway maintainable at the public expense have been laid out to their final level;
  - (d) the street lighting for the roads and footpaths applicable to (a) and (b) above has been erected and is operational;
  - (e) the car parking and any other vehicular access facility required for the building by this permission has been completed;
  - (f) the verge and service margin and vehicle crossing on the road frontage of the dwelling have been completed with the highway boundary properly defined;
  - (g) the street nameplates for (a) above, have been provided and erected.

Prior to occupation, the carriageway, vehicle turning head, footways and footpaths shall be maintained free from obstruction to the free movement

of vehicular traffic and pedestrians and the street lighting and nameplates shall thereafter be maintained.