



# Appeal Decision

Site visit made on 17 May 2022

**by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI**

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

**Decision date: 6 September 2022**

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**Appeal Ref: APP/X1118/W/21/3289836**

**Fairleigh, Georgeham, BRAUNTON, Devon EX33 1JZ**

- 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 Mr Philip Milton against the decision of North Devon District Council.
  - The application Ref 70713, dated 23 October 2019, was refused by notice dated 3 December 2021.
  - The development proposed is the provision of 2nos houses for social rent, the modernisation of 1nos existing house (currently in the form of 2nos flats), and the provision of 7nos open market dwelling houses.
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## Decision

1. The appeal is dismissed.

## Costs

2. A costs application has been submitted by both the appellant Mr Milton and North Devon District Council. This will be the subject of a separate decision.

## Preliminary Matters

3. There was planning permission granted on this site reference 63390, which was dated 26 April 2018. This was for the erection of two dwellings, though this was additional to the approved eight dwellings approved under planning consent reference 59996 (April 2017). From the evidence before me it indicates that there has been a material commencement of this development. This would therefore be a realistic fallback position for the appellant to take if this appeal were dismissed.
4. Reason for refusal No 8 stated the need for a provision of affordable housing through a Section 106 legal agreement. Reason for refusal No 9 from the Council related to the absence of a Section 106 legal agreement "to secure the relevant developer contributions in respect of primary and secondary education, school transport, open space, green infrastructure and legal fees".
5. A completed legal agreement dated 14 July 2022, completed by the appellant and North Devon District Council and Devon County Council has been signed and submitted. The schedule of the agreement includes an obligation for the appellant to contribute towards recreation, education and school transport, and social rent affordable housing (two dwellings on site plus a remainder in off-site financial contribution). The Council confirmed by email on the 18 August 2022 that reasons for refusal Nos 8 and 9 are dealt with by the submission of the legal agreement.

## **Main Issues**

6. The main issues are the following:

- The effect of the development on the character and appearance of the area;
- Whether the proposal includes an appropriate housing mix.
- Whether the proposal would provide appropriate standard living conditions for neighbours and future residents.
- Whether the proposal provides suitable bicycle and bin storage.
- The effect of the development on biodiversity including internationally designated sites.
- Whether the proposal provides a suitable sustainable construction and drainage strategy for the development.

## **Reasons**

### *Character and Appearance*

7. The development would keep the existing dwelling but convert it back to a single two storey dwelling rather than two flats. However, there would also be the development of additional houses, either being semi-detached or detached. The dwellings as proposed would either be on existing garden land or orchard associated with Fairleigh House, or on the land which was previously a former builders yard or similar.
8. There would be an urbanising effect of the development, but overall there would be visual enhancements through the clearance of a number of dilapidated buildings of the former builders yard area. There are also a number of other dwellings fronting the adjacent highway and so this development would not be isolated as a residential area. Indeed, the proposal seeks to keep the existing dwelling on site as a single dwelling house. Furthermore, the site is relatively well contained with existing landscaping to the boundaries, with further planting proposed.
9. It is also acknowledged that there is also a housing development approved at the site which is very similar to that now proposed. The Council has highlighted the density to the western side of the development, but there is little difference from that approved, other than mainly that Fairleigh House is not to be demolished. The density of the proposed layout, including to the western side, is still appropriately low for this rural location and would not be dissimilar to other nearby clusters of housing.
10. The site is within a designated Area of Outstanding Natural Beauty (AONB) and a Heritage Coast area. The National Planning Policy Framework (the Framework) sets out in paragraph 176 that great weight should be given to conserving landscape and scenic beauty in AONB. Within areas defined as Heritage Coast, planning policies and decisions should be consistent with the special character of the area and the importance of its conservation (paragraph 178). Furthermore, paragraph 174 it states that planning should, amongst other things, recognising the intrinsic character and beauty of the countryside.

11. It is my view that the proposed development would bring some enhancements over the current visual impacts of the site within this sensitive rural landscape. Further landscaping could also benefit the development in this regard. Landscaping details have been submitted, such as within the submitted Design and Access Statement. This is not a detailed landscaping scheme, but it does illustrate boundary hedgerows, several ponds and some plant specifications. This is considered sufficient landscaping information at this stage, though further detail can be required by condition. With this landscaping and for the other reasons noted above the proposed development would conserve the landscape beauty of the AONB and the special character of this part of the Heritage Coast. The development would also not harm the special qualities of the Character Area to which the site is located.
12. For these reasons the proposed development would be of an appropriate standard of design, layout, density and landscaping, thereby being in accordance with North Devon and Torridge Local Plan (the Local Plan) policies DM04, DM08A, ST04 and GEO. The proposal is also in accordance with Georgeham Neighbourhood Plan (NP) policies H5, BE1, BE3 and BE4. These policies require development to be of a high quality design, which includes density and layout; protection of the natural environment including the special landscape character and qualities of the Area of Outstanding Natural Beauty; and to conserve the landscape and scenic beauty of designated landscapes and their settings; amongst other things.

#### *Housing Mix*

13. Policy H1 of the NP requires that new housing within the Plan area will be permitted for principal residence occupancy only. Furthermore, policy ST17 of the LP requires that the scale and mix of dwellings, in terms of dwelling numbers, type, size and tenure provided through development proposals should reflect identified local housing needs.
14. The proposal is for dwellings of either 3 or 4 bedroom houses. The Torridge and North Devon Councils Housing and Economic Needs Assessment (HEDNA) advises a need for smaller dwellings are needed too (1 and 2 bedroom). As no dwellings of either 1 or 2 bedroom size are proposed then the development does not accord with policy ST17 as the housing mix would not meet the identified need. There is no substantive evidence that having smaller dwellings would have much of a discernible difference in terms of traffic trips generation. There is mention of off-site smaller housing provision, but there is a lack of detail of this and also the location of these houses appear away from the site area.
15. From the evidence before me the proposed market dwellings would not be restricted to principal residence occupancy. This is not included with the submitted legal agreement. There is also no substantive justification why this has not been included with the proposal. As such the proposal is contrary to policy H1 of the NP.
16. Whilst noting the conflict with policy on these matters I am also aware of the fact that there have been dwellings approved on this site previously. It is understood that the extant consent included only a single 2-bedroom dwelling, with no single bedroom dwellings. Furthermore, it is not clear whether the approved market dwellings were agreed to be restricted to principal residence occupancy. Given the realistic fallback position that exists, the difference

between that now proposed is minimal and therefore reduces the harm that would be caused as a result of this appeal proposal on this issue.

*Living Conditions – Existing Neighbours*

17. The proposed dwellings on this site would be a substantial distance from the nearest neighbours, including those to the north and northwest of the site. With the separation distances the proposal should have no adverse impacts to any existing neighbours to the site. The existing and proposed landscaping would further mitigate any potential impact, though full landscaping details would still be required by condition.
18. For these reasons the proposed development would maintain neighbour living conditions, in accordance with policy DM01 of the Local Plan.

*Living Conditions – Future Residents*

19. The proposed houses are in close proximity to each other within the plot. There was indication of annexes being included for Fairleigh House and the Orchard Close Plots with each having a detached double garage with a accommodation at first floor. Whilst this may have resulted in some overlooking and overbearing impact to occupiers of adjacent houses the appellant has made clear that this was an error and is not what should have been proposed. It is therefore possible that these annexes could be omitted from any approval with the use of a condition.
20. There is also the matter of the size of the houses and in particular certain rooms as proposed. The Council has used the Government document 'Technical housing standards – nationally described space standard' as part of their assessment. The Council has provided examples of room sizes being less than standard for the proposed dwellings, other than for Orchard House. Whilst the 'space standards' may not have been referenced in the Local Plan policies these standards do still provide a benchmark as to the level of space generally needed to provide suitable living conditions for future occupiers. This is not a particularly constrained site so there appears to be no justification why these standards cannot be met. Indeed, the appellant has stated that "We accept that the floor sizes and measurements must be revisited and corrected". No substantive evidence has been submitted to contest the Council's calculations regarding room sizes or overall dwelling sizes.
21. On this basis there would be multiple examples where the dwellings as proposed would be cramped and provide a poor standard of living condition for future occupiers, being a form of substandard design, thereby being contrary to Local Plan policies DM01 and DM04. These policies seek a good design and layout for new development and to ensure against harm to intended future occupiers, for example.

*Storage for Bins and Bicycles*

22. There is a lack of detail with the submitted drawings to demonstrate where both bicycle storage and bin storage would be positioned. However, the appellant has stated that they will provide this storage. In my view, there is space available for an appropriate level of storage for both bicycles and bins. On this basis, if I was to allow the appeal I would impose a condition requiring details of this storage for each property. The proposal is therefore in accordance with Local Plan policy DM04 and Georgeham NP policy BE7, which

require development to provide for refuse and recycling storage and also provide cycling facilities.

### *Biodiversity*

23. The site is within the 'Zone of Influence' of the Braunton Burrows Special Area of Conservation (SAC). This is an ecologically important coastal area of mobile dune vegetation, for example, with species-rich dune grassland. The introduction of new dwellings into this area is considered to have a likely adverse effect to the SAC through increased recreational pressures.
24. If I were to allow the appeal I would consult Natural England on this matter and undertake an appropriate assessment. As I am dismissing the appeal for other reasons, I have not pursued this matter. However, it is noted that there has been no mitigation included with the submitted legal agreement, though it is apparent that the appellant is willing to provide this mitigation contribution.
25. In terms of other biodiversity issues as a result of the proposed development, there was submitted in 2021 a preliminary ecology appraisal. The appellant's document sets out that from a biodiversity perspective this proposed housing scheme would be an improvement over that approved previously. The existing house would be retained and also there would only be one access, meaning more hedgerow planting could be undertaken.
26. In terms of the survey of the current site, the appraisal states that the grassland at the site is considered to be species-poor and have little ecological value. However, it did state that whilst there was no evidence of bats found that some of the vegetation could provide a range of suitable foraging habitats for bats and that the small stone and tin outbuilding could potentially be attractive to bats. The appraisal identifies the nearby Caen Valley Site of Special Scientific Interest with Greater Horseshoe bat maternity roosts. The document states that Horseshoe bats are averse to artificial lighting. However, there does not appear to be details of such a lighting plan for this site, though this would be important to ensure against adverse impact to this protected species. There is little recent evidence also of bat activity being surveyed.
27. The appraisal also stated that one common lizard was seen at the southern end of the site in 2015 and said there was still suitable refugia on site. The document recommended a reptile survey should be carried out of all suitable habitats prior to any further disruptive work commencing on site. However, this should be undertaken prior to any permission be granted to ascertain if there is a reptile population on site and whether any mitigation would be required. This does not appear to have been done at this stage.
28. There are proposals for biodiversity net gain at the site. There are various enhancements proposed such as the bat boxes, additional planting and ponds. I also note the extant consent which could see much of the site cleared. However, there is a lack of information regarding some protected species as set out above, which could result in a net loss of biodiversity if not addressed suitably.
29. As such, based on the evidence before me, the proposal would be contrary to Local Plan policies DM08, ST09, ST14 and GEO, and NP policies NE1 and NE2. These policies seek to enable biodiversity net gain where possible, and to

incorporate conservation and/or appropriate habitat enhancement to improve biodiversity and achieve sustained biodiversity net gain, amongst other things.

### *Sustainable Drainage and Construction Strategy*

30. The proposed dwellings are each to be connected to an independent 'biodisc' sewage treatment unit, due to the distance between the site and public sewer systems. This is a form of non-mains foul drainage system. The Environment Agency (EA) objected to the proposal because they stated that anything other than connection to a public sewage treatment plant should be supported by sufficient information to understand the potential implications for the water environment. A form has been submitted to EA, but I have no response before me that EA have accepted this and withdrawn their objection to the proposal.
31. The appellant has highlighted that the current house on site uses a septic tank and also that non-mains drainage systems were approved with the previous schemes. However, whilst they are very similar residential development schemes there are differences and this is a new proposal, which currently has seen an objection from EA. Furthermore, there is very little information with the proposal as to the drainage scheme and what would be possible (such as evidence from percolation tests, for example).
32. It is my view that whilst conditions can be used for full details of drainage, in this case there is insufficient evidence to demonstrate that the proposed methods are suitable for this location and development. As such, on this matter, the proposed development with this appeal fails to demonstrate an appropriate drainage strategy, in conflict with Local Plan policies DM02, ST03 and GEO. These policies require that development ensure against pollution of surface or ground water; adopt Sustainable Drainage Systems; amongst other things.
33. With regards to sustainable construction, details have been provided with the submitted Design and Access Statement with further information within the Appeal Statement. This includes rainwater harvesting and the use of a 'passive house' approach. Further details can be required via condition and so the proposal does not conflict with LP policy ST05 and Georgeham NP policy NE4, which requires that development incorporates passive design measures to reduce overall energy demand and incorporate small scale energy efficiency, for example.

### **Planning Balance**

34. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework is engaged.
35. The proposal would provide dwellings towards the local housing supply, including affordable housing provision, with benefits from the retention of the existing dwelling on site. There would be economic benefits from the

construction of the dwellings, and this could be considered an efficient use of the site. There are also the contributions included with the Planning Obligations which would have some wider community benefits, amongst other potential benefits. I would give these benefits modest weight, given that the size of the development and modest dwelling numbers.

36. However, there is the harm to the living conditions of future occupiers, the harm as a result of the housing mix/type proposed (albeit to a limited extent), and the lack of information regarding the safeguarding of protected species and also relating to providing an appropriate drainage scheme. These harms combined and as identified above would be significant. As a result, the social and environmental role of sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

### **Conclusion**

37. For the reasons given above I conclude that the appeal should be dismissed.

*Mr S Rennie*

INSPECTOR