



Appeal Decision

Site visit made on 25 July 2023

By C Cresswell BSc (Hons), MA, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 August 2023

Appeal Ref: APP/X1118/W/22/3307462

Land to the west of Back Lane, Back Lane, Chulmeigh, Devon, EX18 7AX

- 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 outline planning permission.
 - The appeal is made by Mr S Rives-Roberts (Rives Developments Ltd) against North Devon District Council.
 - The application, Ref 74895, is dated 22 February 2022.
 - The development proposed is erection of 5no. dwellings & associated works with some matters reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for a development described as "erection of 5no. dwellings & associated works with some matters reserved" at Land to the west of Back Lane, Back Lane, Chulmeigh, Devon, EX18 7AX, in accordance with the terms of the application, Ref 74895, dated 22 February 2022, subject to the conditions set out in the Schedule at the end of this Decision.

Procedural Matter

2. The application was made in outline with all matters reserved apart from access. I have determined the appeal on that basis.

Main Issue

3. The main issues in this case are:
 - whether the development would provide an appropriate quantity and mix of housing.
 - whether the development would make adequate provision for green infrastructure.

Reasons

Housing

4. The appeal concerns an agricultural field which is situated on the edge of Chumleigh. It is part of a larger area of land which has been allocated for housing development in the Local Plan¹. Policy CHU02 of the plan explains how the housing allocation should be developed. My attention has been drawn to paragraph (1) of the policy which says that the allocated site *is proposed for*

¹ North Devon And Torridge Local Plan 2011-2031, adopted October 2018.

residential development that provides approximately 20 dwellings, the size and tenure of which will be reflective of local needs.

5. I have read an email from the Council's Housing Enabling Officer which explains the need for affordable housing in Chumleigh for both sale and rent, including a particularly strong demand for one bedroom houses. Yet while I appreciate the need for such housing, the application before me was made in outline with all matters, except access, reserved for future determination. The size and tenure of dwellings on the site would be matters for consideration at a later stage in the planning process. As only 5 dwellings are being proposed on the appeal site at present, there is no policy requirement to provide affordable housing. However, the situation may change if the remainder of the housing allocation were to come forward for development.
6. Paragraph 125 of the Framework² says that planning policies and decisions should *avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site.* In this case, the site in question is part of a Local Plan allocation which would have been subject to scrutiny at the examination. Though Policy CHU02 anticipates approximately 20 dwellings across the whole of the allocated site, no minimum target is specified. Hence, while the appeal site may be capable of accommodating more than 5 homes, the density being proposed is within the bounds of the policy. If the remainder of the allocation were to be developed in the future, it would potentially bring the total quantity of housing closer to the 20 dwellings anticipated.
7. I have been referred to paragraph (2)(a) of Policy CHU02 which indicates that the site should be released *in phases through the plan period in response to the needs of the community.* Exactly what is meant by community need in this context is not specified in the policy. However, the evidence indicates that there is a limited supply of deliverable housing sites in the area at present. Given these circumstances, it seems to me that the needs of the community would be well served by releasing the site for development, therefore helping to increase the supply of local housing.
8. I therefore conclude on this issue that the development would provide an appropriate quantity and mix of housing. For the reasons given above, the proposal would comply with Policy CHU02 of the Local Plan and paragraph 125 of the Framework.

Green infrastructure

9. The development would trigger a requirement for the provision of green infrastructure in accordance with Policy DM10 of the Local Plan. However, there is no legal agreement to secure a financial contribution for off-site provision. In the absence of such an agreement, or other way of securing green infrastructure, the proposal would fail to comply with Policy DM10. I therefore conclude on this issue that the proposed development would not make adequate provision for green infrastructure.

Planning Balance

10. The Council is currently unable to demonstrate a 5-year supply of deliverable housing sites and so, according to footnote 8 of the Framework, the policies of the Local Plan should be considered out of date. In these circumstances,

² National Planning Policy Framework, July 2021

Paragraph 11(d)(ii) of the Framework says that 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.

11. In this case, development would provide 5 dwellings on a site that has already been allocated for housing following a public examination process. Given the imperative of the Framework to significantly boost housing supply, this is a substantial benefit to be weighted in the planning balance.
12. On the other hand, the proposal would also result in harm as no provision has been made for green infrastructure. However, the contribution being sought is relatively modest in this case. The lack of an off-site contribution would be unlikely to significantly undermine the Local Plan strategy for green infrastructure provision. I am also mindful that the development is part of a larger housing allocation and the layout of the site is reserved for future determination. The possibility of an on-site contribution for green infrastructure cannot be discounted. Hence, I consider the harm arising from this aspect of the proposal to be moderate.
13. For these reasons, the moderate harm arising from the lack of green infrastructure provision is outweighed by the substantial benefits of providing new housing on the site. As such, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. It is therefore justified to deviate from the Local Plan and allow the appeal.

Conditions

14. I have imposed the standard requirement for further details to be approved before development takes place, together with standard time limit conditions. In the interests of character and appearance, there are conditions requiring details of external materials, means of enclosure and landscaping. Certain permitted development rights are also removed. For highway and pedestrian safety there are conditions requiring visibility splays and the installation of roads and footpaths. To protect surrounding residents there are conditions to control the construction process. There are also conditions to ensure that any ground contamination is remediated. Finally, conditions are imposed to promote nature conservation interests.

Conclusion

15. The appeal is allowed.

C Cresswell

INSPECTOR

Schedule of Conditions

- 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 development hereby permitted shall be carried out in accordance with the following approved plans/details insofar as the access and visibility splays are concerned: 128 21 001 Location Plan, 128 21 002 Rev A Proposed Access Plan, 128 21 003 Rev A Proposed Site Block Plan.
- 5) The reserved matters shall indicate the siting, design and external appearance, including materials of construction of all walls, fences and other means of enclosure to be used in the development as set out in the design code within the Planning Statement and shall be carried out as approved.
- 6) As part of the reserved matters application, scaled drawing(s) showing existing levels on the site and proposed finished floor levels of the approved dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with such drawings.
- 7) No dwelling shall be occupied until the means of enclosure and the bin storage area for that dwelling have been provided in accordance with the approved plans or details submitted as part of the reserved matters.
- 8) Prior to the first occupation of any dwelling on the site, access onto the public highway, parking areas and footpath shall be hardened, surfaced, drained and maintained thereafter to the satisfaction of the Local Planning Authority.
- 9) Visibility splays shall be provided, laid out and maintained for that purpose at the site access prior to the first occupation of any dwelling hereby approved in accordance with the approved plans.
- 10) 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 (desktop) survey for potential ground contamination. The report shall be prepared by a suitably qualified person and sufficient to identify any and all potential sources of ground contamination on 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 along with any remediation strategy shall be presented to and agreed with the Local Planning Authority.
- 11) Should any unexpected contamination of soil or groundwater 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 any such unexpected contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.

- 12) During the construction phase, no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:
 - a) Monday – Friday 07.30 – 19.00,
 - b) Saturday 08.00 – 13.00
 - c) Nor at any time on Sunday, Bank or Public holidays.
- 13) Prior to the commencement of development, including any demolition, site clearance, groundworks or construction (save such preliminary or minor works that the Local Planning Authority may agree in writing) a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works shall be submitted in writing for the approval of the Local Planning Authority. For the avoidance of doubt and where relevant, the CMP shall include:
 - a) details of measures to prevent mud contaminating public footpaths and roads;
 - b) details of control measures for addressing fugitive dust from earthworks and construction activities; dust suppression;
 - c) noise control plan which details hours of operation and proposed mitigation measures;
 - d) specified parking for vehicles associated with the development works and the provision made for access thereto;
 - e) a point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed.

The details so approved and any subsequent amendments as shall be agreed in writing by the Local Planning Authority shall be complied with in full and be monitored by the applicants to ensure continuing compliance during the construction of the development.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority give written consent to any variations.
- 15) As part of the reserved matters details of the location of the five integrated bat roosts and 10 integrated birds nest boxes shall be included in accordance with the details set out in the Ecological Impact Appraisal by Orbis Ecology. These shall be sited in accordance with the approved details and retained thereafter.

- 16) The development shall be carried out in accordance with the recommendations as detailed in the other mitigation requirements Section 6 of the Ecological Impact Appraisal by Orbis Ecology.
- 17) As part of the reserved matters, a detailed landscape and ecological management plan (LEMP) shall have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The content of the LEMP will address and expand upon the provision and management of all landscape and biodiversity avoidance, mitigation and enhancement measures of the development as set out within the ecological appraisal and preliminary ecological appraisal shall include:
- a) a description and evaluation of landscape and ecological features to be created, managed and ecological trends and constraints on site that might influence management;
 - b) a biodiversity impact assessment in accordance with the North Devon UNESCO World Biosphere Reserve Offsetting Strategy 2013-2018 / DEFRA Methodology
 - c) aims and objectives of management;
 - d) appropriate management options for achieving aims and objectives;
 - e) prescriptions for management actions;
 - f) preparation of a work schedule (including an annual work plan capable of being rolled forward over an initial 10-year period);
 - g) details of the body or organisation responsible for implementation of plan;
 - h) ongoing landscape and ecological monitoring and implementation of any necessary remedial measures;
 - i) means of reporting of landscape and ecological monitoring results to the Local Planning Authority and provisions for seeking written agreement to any changes to the management actions and prescriptions that may be necessary to ensure effective delivery of the aims and objectives of the LEMP over time.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning landscape and biodiversity objectives of the scheme. The development shall be implemented in accordance with the approved details.

- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class(es) A, AA, B or E (a) of Part 1 and class(es) A and B of Part 2 of Schedule Two of the Order.

Sue Thomas

From: Planning Appeals
Sent: 03 May 2023 17:47
To: West-1
Cc: Treetops Planning; Peter Rowan
Subject: 3307462 - Land at Back Lane, Chulmleigh

Our ref: 74895

Dear Ms Langridge

**Town and Country Planning Act 1990
Appeal by Rives Developments Ltd.**

The above appeal is currently under consideration by the appointed Inspector. Since the submission of the appeal documents, including the LPA's Statement of Case, it has been determined that the Council now has a 5 year housing land supply.

A press release was made on Friday 27th April 2023, announcing that North Devon and Torridge District Councils now have a joint supply across the Local Plan area of 5.9 years. This is detailed in the report at the following link: <https://consult.torridge.gov.uk/kse/folder/91966>

The Planning Officer Report submitted as Questionnaire Paper 24d (pages 7,8 & 9 (23/24/25)), the Appellant's Statement of Case (at paragraphs 6.1 – 6.6) make reference to the lack of 5 year housing land supply across the Local Plan area at the time that these documents were created. The LPA's Statement of Case addresses issues around the proposed partial development this, allocated, site.

I would be grateful if this information could be passed to the Inspector for their consideration if it is appropriate to do so. Please note that this email is also copied to the appellant's agent.

Kind regards

Sue Thomas

Sue Thomas | Senior Planning Support Officer (Appeals) ~ Planning, Housing and Health
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