



Appeal Decision

Site visit made on 2 September 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/X1118/W/23/3331613

Off Meadow Park, Barnstaple EX31 3QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Robert Lester of Rowan Homes SW against the decision of North Devon District Council.
 - The application Ref is 77075.
 - The development proposed is the change of use of open space to accommodate three two-storey houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council determined the application a new version of the National Planning Policy Framework (the Framework)¹ came into effect. During the appeal, the main parties have had the opportunity to provide comments on the revised Framework and, where received, I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
3. I have used the description of development as stated on the planning application form.
4. Revised plans have been submitted with the appeal which differ from the proposals before the Council at the time the planning application was determined and upon which interested parties had the opportunity to make representations. If I were to determine the appeal based on the revised plans, interested parties would be deprived of the opportunity to make representations on the amendments. As such an approach could be deemed to be so unfair as to be unlawful, as per the Holborn case², I have based my determination of this case on the details and plans before the Council when the planning application was determined.

Main Issues

5. The main issues are:
 - whether the appeal site is suitable for the proposed development, having regard to the local development strategy and national planning policies on the provision of public open space;

¹ December 2023

² *Holborn Studios Ltd v Hackney LBC* [2017] EWHC 2823 Admin (the Holborn case)

- the effect of the proposed development on the character and appearance of the area;
- whether future occupiers of the proposed dwellings would experience acceptable living conditions having regard to daylight and outlook (Plot B) and the size of the bedrooms proposed for all dwellings;
- the effect of the proposed development on the safety of users of Meadow Park, with specific reference to parking;
- the effect of the proposed development on biodiversity; and
- the effect of the proposed development on the living conditions of existing occupiers of No.25 Meadow Park and No.27 and No.29 Cedar Grove, with regard to privacy.

Reasons

Public open space

6. The appeal site comprises an overgrown rectangular plot of land located within an established residential area and accessed off the Meadow Park cul-de-sac. The evidence before me, including an approved Landscaping Details plan³, shows the appeal site as a grassed area free from development. It forms part of the reserved matters permission⁴ relating to Phase 2 of the Roundswell Village Estate.
7. I have also been provided with a copy of an Agreement made under Section 52 of the Town and Country Planning Act 1971⁵ relating to the outline planning permission⁶ associated with the Roundswell Village Estate master plan. This agreement obligated the Applicants⁷ to lay out to an adoptable standard the open spaces in the housing areas and for these to be conveyed to the Council. However, as confirmed by the Council⁸, the transfer of the open space comprising the appeal site has not occurred.
8. Although now in the ownership of the appellant, following the liquidation of the Applicants, this does not alter the designation of the site as open space. Nor does the fact that public access to the site has been restricted since the appellant purchased the site and fenced the gap between the boundaries to No.24 and No.25 Meadow Park. In the absence of the identification of a replacement area of open space or an assessment showing that the site is surplus to requirements, the proposed development would result in the loss of an area of open space. This would be detrimental to the health and well-being of the local community it is intended to serve, largely the existing occupiers of Meadow Park. Any monetary value the land may now have to the appellant or whether its designation was unknown at the point of purchase, are not determinative factors in this appeal.
9. I conclude that the proposed is not suitable for the proposed development, having regard to the local development strategy and national planning policies on the provision of public open space, contrary to policies DM04, DM09 and

³ Plan B:901:B:2:SP3 – Landscaping Details: Phases 1 & 2, dated March 2001

⁴ Application No. 13265, dated 8 May 1991

⁵ Dated 17 May 1989

⁶ Application No.5311

⁷ Magnus Developments Limited, Lovell Homes Limited and J.W.Sharman Limited

⁸ Letter ref LS/CC/005891 from North Devon Council Legal Services, dated 23 August 2023

ST04 of the North Devon and Torridge Local Plan 2011-2031 (the Local Plan). Taken together, these policies seek to provide well-designed public spaces, safeguard the amenities of existing residents and protect existing green infrastructure, amongst other provisions. This is consistent with the Framework's approach to protecting areas of open space and ensuring new developments achieve a high standard of amenity for existing and future users.

Character and appearance

10. Meadow Park comprises short rows of two-storey terraced dwellings, with staggered frontages. The proposed development comprises a row of three two-storey dwellings, with the façade of the closest dwelling to No.27 Meadow Park being set back from the remainder of the terrace. Notwithstanding the similar size, height and simple facades to the existing built form, the proposed dwellings would face towards the side elevation and/or close board boundary fence of No.25 Meadow Park. This arrangement would be at odds with the existing pattern of built form which is orientated towards a rectangular space incorporating a communal car parking area, the meandering arrangement of the narrow carriageway and discrete areas of planting.
11. Further, the introduction of built form onto an undeveloped area of grass would obscure any views from Meadow Park of the open space and its verdant backdrop created by the mature trees just beyond the rear site boundary. It would fill in the currently open corner of the communal parking area which provides a break in the largely continuous frontages of the built form.
12. Along with the overlapping positioning of the proposed dwellings relative to the existing properties site that are located perpendicularly to the appeal site, the proposed front courtyard arrangement, shared pedestrian access and positioning away from the pavement, are all features not characteristic of the area.
13. I conclude that the proposed development would harm the character and appearance of the area. It would, therefore, be contrary to Policy ST04 of the Local Plan which states that design proposals should respond to the characteristics of the site and its wider context. This approach reflects the Framework's objective of creating high-quality, well-designed places and the importance of the pattern of development and layout of the built form in achieving this, as set out in the National Design Guide (NDG). Consequently, the proposed development conflicts with the Framework and NDG in this respect.
14. Although not a policy listed on the decision notice relating to this main issue, Policy ST04 of the Local Plan also refers to the need for the design principles within Policy DM04 to be taken into account. These include ensuring proposals are appropriate and sympathetic to the pattern of development in the surrounding area and reinforce its key characteristics. I therefore find the proposed development conflicts with Policy DM04.

Living conditions – future occupiers

15. The orientation towards, and proximity to, the side elevation of No.25 would limit the amount of daylight reaching the kitchen of Plot B. In the absence of a daylight study demonstrating how much daylight would reach the kitchen through the small window, I cannot conclude with certainty that future occupiers of Plot B would experience acceptable living conditions. Moreover,

- views from the kitchen window would comprise the closed board boundary fence and the blank gable end of No.25 Meadow Park at a proximity which would significantly restrict the outlook.
16. Although marginally closer to the side elevation of No.25, the angled window to the front bedroom of Plot B would widen and redirect the outlook for future occupiers of the dwelling such that it would not be detrimental to their living conditions.
 17. Although no bed space numbers have been provided, the Design and Access Statement (DAS) states that the proposed dwellings would comprise 93 sqm of internal floor space. This meets the Technical Housing Standards (THS)⁹ minimum area for a three-bed, two-storey dwelling for up to five people. Whilst not formally adopted by the Council, the THS provides a 'good yardstick' for determining the living conditions likely to be experienced by future occupiers.
 18. No bedroom floor spaces have been provided and despite one of the bedrooms having an ensuite shower room, the master or main bedroom is not indicated. Additionally, the First Floor Plan¹⁰ shows three bedrooms of a similar size. Regardless of whether the use of the THS is appropriate, it is reasonable to consider that at least one of the proposed bedrooms would be used as a double, therefore requiring a floor space suitable for two people.
 19. The First Floor Plan indicates the internal width of each dwelling would be 5.5 metres and this measurement is also shown as the distance between the boundary fencing to the rear of the proposed dwellings on the Ground Floor Plan and Site Layout¹¹. On this basis, it is not clear if appropriate allowances have been made for the thickness of the dividing walls between the properties or the internal bedroom walls. Moreover, an indication of how the minimum amount of furniture required could be positioned in each bedroom has not been shown on the plans. Therefore, based on the evidence before me, I cannot conclude with certainty that sufficient furniture and space could be accommodated whilst permitting future occupants to comfortably sit, get dressed or relax without feeling claustrophobic or cramped. This would be detrimental to their living conditions.
 20. I conclude that future occupiers of the proposed dwellings would not experience acceptable living conditions, with specific regard to access to daylight and outlook (Plot B) and the size of the bedrooms proposed for all dwellings. As a result, it would conflict with policies DM01 and DM04 of the Local Plan which supports development only where the amenity of the intended occupiers would be safeguarded, not harmed. The proposed development also conflicts with the Framework's aim to ensure development has a high standard of amenity for existing and future users.

Parking

21. No dedicated parking spaces are provided for the proposed dwellings on or close to the appeal site and there is no indication that a car-free or low-car development is proposed. Instead, the DAS suggests that future occupants of the proposed dwellings could park in the communal spaces off Meadow Park which currently serve existing occupiers of Meadow Park (except for Nos 1-3 and 19 Meadow Park which each have a private driveway and garage).

⁹ Technical Housing Standards – Nationally Described Space Standards (2015)

¹⁰ Drawing ref: 223.5.3

¹¹ Drawing ref: 223.5.2

22. The evidence before me indicates that the communal parking areas provide a total of 47 car parking spaces, although, given the absence of clear markings, I was unable to verify this during my site visit. Nonetheless, when measured against the number of dwellings in Meadow Park, this equates to a 1.5 spaces per dwelling ratio. Even if I were to apply this standard to the proposed dwellings, it would mean that up to five additional vehicles would require space to park in the cul-de-sac. This would place additional demand on the existing parking spaces despite the site's relationship to the town centre and the provision of a cycle rack.
23. There are limited opportunities for safe and legal car parking elsewhere in Meadow Park given the width and meandering nature of the carriageway. Furthermore, I observed some vehicles parked partially across the pavement close to the Meadow Park/Cedar Grove junction. In the wider area, the width of the carriageway and its relationship with the built form also restricts the number of places where vehicles can be parked safely, even if future occupiers would be willing to park their vehicles away from Meadow Park. Consequently, the lack of parking for the proposed development would increase the likelihood of vehicles being parked in unsafe, obstructing and potentially illegal locations, which would be detrimental to the safety of other highway users.
24. I conclude that the proposed development would harm the safety of users of Meadow Park, with specific reference to parking, contrary to policies DM04, DM05 and ST10 of the Local Plan. Together these policies require development to provide safe and appropriate highway access and incorporate adequate well-integrated and managed car parking. It also conflicts with the Framework which states that, in assessing applications, it should be ensured that safe and suitable access to the site can be achieved for all users.

Biodiversity

25. Policies DM08 and ST14 of the Local Plan stipulate that development should conserve, protect and, where possible enhance biodiversity interests, amongst other provisions. Where it has been demonstrated that a net gain in biodiversity is not feasible on-site, the delivery of biodiversity net gains via an offsetting strategy is supported by the Council.
26. No substantive information was provided within the application documents or as part of the appeal confirming the pre-development biodiversity value of the appeal site or its potential value post-development. The limited detail on the Ground Floor and Site Layout Plan adds little certainty that the existing biodiversity onsite would be protected or enhanced. Furthermore, I have not been provided with evidence confirming a commitment, or a suitable mechanism, to secure off-site biodiversity net gains. Therefore, the biodiversity interests of the site and the wider Council area, would not be protected.
27. I conclude that the proposed development would harm the biodiversity of the site, contrary to policies DM08 and ST14 of the Local Plan which seek to protect such interests. It would also conflict with the Framework's objective of minimising impacts on and promoting net gains in biodiversity.

Living conditions – existing occupiers

28. The angled window to the first-floor bedrooms of Plots B and C of the proposed development would provide some views into the rear garden of No.25 Meadow Park, albeit obliquely. However, whilst the occupiers of No.25 Meadow Park

would experience some loss of privacy when using their garden, this would not be significant nor greater than the expected level of mutual overlooking likely in residential areas.

29. The side elevation of the proposed Plot C dwelling would be sited close to the rear boundary fence associated with No.27 and No.29 Cedar Grove. However, no windows are proposed in this elevation. While the first-floor bedroom window to Plot C and, to a lesser extent, Plot B, would permit some views into the rear gardens of No.27 and No.29 Cedar Grove, the angle of the glazing would restrict the direction and width of the view.
30. I conclude that the proposed development would not cause significant harm to the living conditions of existing occupiers of No.25 Meadow Park and No.27 and No.29 Cedar Grove with regard to privacy. I therefore find no conflict with policies DM01 and DM04 of the Local Plan which supports development only where the amenity of any neighbouring occupiers would be safeguarded, not harmed. I also find conflict with the Framework's aim to ensure development has a high standard of amenity for existing and future users would also be met.

Other Matters

31. The proposed development would provide social and economic benefits from the construction and occupation of three dwellings. However, given the small scale of the development, any such benefits would be limited. Similarly, the benefits derived from enhancing the appearance of the currently overgrown site would be small. In any event, the appeal scheme is not the only way this could be achieved.
32. Although the appellant's appeal statement refers to the provision of much-needed affordable accommodation, no substantive evidence is before me indicating that the new homes comprise Affordable Housing. Furthermore, the planning application form indicates the proposed development includes three market houses.
33. The appeal site is located within the zone of influence of the catchment of the Braunton Burrows Special Area of Conservation (SAC), a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). If the circumstances leading to the grant of planning permission had been present, I would have considered the impact of the proposed development upon the SAC, in accordance with the Habitat Regulations. However, as I am dismissing the appeal on the main issues above, I have not found it necessary to consider such matters any further.
34. The procedure undertaken during the Council's Committee Meeting¹² when the planning application was discussed and any internal pressures the Council may be experiencing, are not matters for me to consider as part of my determination of the appeal. Nor is the title of the application the Council included on the minutes from the meeting. The letter from the Council's Legal Services does not infer that the Committee incorrectly determined the planning application.
35. I sympathise with the situation regarding the health of the appellant's architect. However, this is not a reason which justifies permitting harmful

¹² Dated 9 August 2023

development or determining the appeal other than in accordance with the development plan.

Planning Balance and Conclusion

36. I have not found that the proposed development would harm the living conditions of existing occupiers of No.25 Meadow Park and No.27 and No.29 Cedar Grove with regard to privacy. However, I have found that the proposed development would result in the loss of an area of open space, harm the character and appearance of the area, the living conditions of future occupiers and biodiversity. I attach significant weight to this harm in my determination of the appeal and the resultant conflict with the development plan.
37. Consequently, the proposed development conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, the appeal is dismissed.

Juliet Rogers

INSPECTOR