
Appeal Decision

Hearing held on 26 January 2016

Site visit made on 23 February 2016

by Phillip J G Ware BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 July 2016

Appeal Ref: APP/P1133/W/15/3132863

Land at Manor Road, Abbotskerswell, Newton Abbot, Devon

- 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 Linden Homes (South West) Limited against the decision of Teignbridge District Council.
 - The application Ref 14/02802/MAJ, dated 16 September 2014, was refused by notice dated 19 February 2015.
 - The development proposed is an outline application for up to 53 new dwellings, with approval sought for the means of access.
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Procedural matters

1. The application was in outline, with only the access to be determined along with the principle of the proposal. I have dealt with the appeal on that basis.
2. An additional redline plan was submitted at the Hearing. No party raised any objection to this and I am satisfied that taking it into account would not prejudice the position of any party. I have added it to the plans being considered as part of the appeal.
3. At the end of the Hearing it was left that a revised Unilateral Planning Obligation would be submitted dealing with a range of matters, as discussed at the Hearing. In the event a multilateral Planning Obligation (dated 2 March 2016) was submitted, signed by the District Council, the County Council, the appellant and other parties. I have taken this into account and deal with it below.
4. On 15 April 2016 appeal decisions¹ were issued in relation to Plumtree Cottage, Abbotskerswell. I invited the comments of the parties on these decisions, and have taken the responses into account.

Decision

5. The appeal is dismissed.

Application for costs

¹ APP/P1133/W/16/3143222 and 3143226

6. At the Hearing an application for costs was made by Teignbridge District Council against of Linden Homes (South West) Limited. This application is the subject of a separate Decision.

Main issues

7. Three of the Council's reasons for refusal (nos. 4, 5 and 6) related to affordable and custom build housing, travel planning and green infrastructure. The Statement of Common Ground between the parties noted that these issues might be resolved by the submission of a S106 Obligation. Although this had been intended to be a Unilateral Obligation, in the event it was submitted as an Obligation signed by all parties. I have no reason to consider that these matters remain in dispute.
8. On that basis, there are three main issues in this case:
- Whether the proposal would harm the settlement pattern of the area, in the light of development plan policy and the social and economic needs of Abbotskerswell
 - Whether the proposal would harm biodiversity and fail to provide adequate habitat mitigation and offsetting
 - Whether there are any material considerations, particularly in relation to the provision of housing, sufficient to outweigh any harm or conflict with policy in relation to the above matters

Reasons

The settlement pattern and the needs of Abbotskerswell

9. The appeal site is around 3.7 hectares in area and is on the northern side of the village of Abbotskerswell. It is a number of open unmanaged fields, sloping to the south towards the settlement. It is bounded by Manor Road to the north, residential development in Forde Close and Manor Close to the southwest and a business park to the southeast. The local roads in the vicinity are of limited width and generally do not have pedestrian footpaths.
10. There is no planning history related to the site. The proposal, which is in outline, shows access from Manor Road.
11. Abbotskerswell is around 2 kms south of Newton Abbott. It is designated as a village in the Teignbridge Local Plan 2013-2033 (LP) (adopted in 2014)² and the appeal site is adjacent to but outside of the settlement limits³ (which were carried forward from an earlier plan). It is accepted by the parties in the Statement of Common Ground that Abbotskerswell is a sustainable settlement with a number of facilities including a shop, a school, a church, a village hall, play facilities and some employment opportunities.
12. The LP policy is that outside settlement limits the area is classified as open countryside, in which development will be strictly managed and limited to uses which are necessary to meet certain aims⁴. These uses include the provision of affordable housing.

² LP policy S21

³ LP policy S21A and Proposals Map

⁴ LP policy S22

13. In addition, LP policy EN1 defines Strategic Open Breaks, whose purpose is to maintain the physical separation of certain settlements and focus most development in major towns. Development within the defined Breaks will be limited to that which retains their open character and their contribution to the settlements' settings. The appeal site is in the gap between Newton Abbot and Abbotskerswell and, whilst no landscape harm has been identified⁵, a development of this scale would clearly erode one part of this important area.
14. The considerations which might lead to policy-compliant development outside settlement limits are set out in LP policy S22. One of these is the provision of affordable housing for local needs. I will return to this below, but note that this element represents only a third of the proposed development, which is clearly not an affordable-led scheme.
15. On that basis, the proposal is clearly contrary to the LP, as it is outside the settlement boundary and therefore within the countryside, and is within a Strategic Open Break. This is accepted by the appellant.
16. However LP policy S21 acknowledges that Abbotskerswell is a settlement where limited development will be appropriate, provided this meets the social and economic needs of the village, protects its rural character and minimises the need to travel. Although the site is outside the settlement limits, it is adjacent to the boundary and it is therefore reasonable to consider this policy.
17. As noted above, the settlement limits of Abbotskerswell were carried forward from an earlier plan, but clearly formed part of the consideration of the adopted LP. The Inspector who examined the LP noted that there was an intention to prepare a Neighbourhood Plan (NP) for Abbotskerswell which could consider the settlement limits and potential sites for expansion. In my view this remains an appropriate approach, in line with LP policy S23, which supports the preparation of Neighbourhood Plans which allow for local needs to be considered and community development to be supported.
18. The appellant considers that there has been little progress on the NP to date, and that there is little evidence of likely progress in the short to medium term. However, from what I heard at the Hearing, there has been consultation on Aims and Objectives, and an estimate of 6 months was given to prepare policies. Whilst it is clear that development cannot be halted whilst the NP progresses, and it is not at such a stage that any weight can be placed on it, there is clearly a mechanism for considering the wider needs of the settlement in future. In addition the Council stated that the review of the LP has begun, and this will doubtless consider local needs and housing allocations.
19. The appellant states that the site is well related to the village core and its services. As noted above and explained in particular in the appellant's statement, there is no dispute that Abbotskerswell is a sustainable settlement especially in terms of services, facilities and transport links. However, given the relatively small size of the village, the proximity of the site to the village centre is a feature which would be common to any development on the fringes of the settlement. This factor adds little to the arguments in favour of the proposal.
20. I realise that there has been no housing development in Abbotskerswell for a significant period, and that a Strategic Housing Land Availability Assessment

⁵ The officers' report acknowledges that some development on the less visible part of the site might comply with landscape policy

(SHLAA) (2010) identified the site as being suitable, available and achievable. However this was some years ago, and the SHLAA, which long predates the LP, does not add any great weight to the consideration of the needs of the particular settlement.

21. For the above reasons, I consider that the proposal would harm the settlement pattern of the area, in the light of the fundamental conflict with development plan policy, taking account of the social and economic needs of Abbotskerswell.

Ecological Impact and Mitigation

22. The site is largely within a greater horseshoe bat 'strategic flyway' as designated by Natural England, within the South Hams Special Area of Conservation (SAC). Survey work has revealed that only small numbers of bats use this area due to its sub-optimal habitat, as it is ungrazed and subject to an unfavourable wind direction. The proposal would result in the loss of an area of semi-improved grassland.
23. LP policy⁶ emphasises the need to protect the biodiversity of an area and important habitats, and with legally protected and priority species⁷. These policies are in line with the National Planning Policy Framework (the Framework), which seeks to protect and enhance the natural environment, and deals with mitigation and compensation.
24. The appellant provided an Ecological Impact Assessment report and a Landscape and Ecological Management Plan, which were not the subject of dispute. The proposal includes landscaping and an on-site area of ecological mitigation but, in addition to this, there does not appear to be any disagreement that biodiversity offsetting would be required.
25. The Council's objection, as discussed at the Hearing, relates to the proposed biodiversity offsetting arrangements as covered by the Planning Obligation. The issue relates to three objections, based on the response of Natural England – who did not criticise the general approach to offsetting or to the effect on the SAC.
26. Firstly the Council points out that the appeal site is a single habitat, whilst the offsetting proposal is fragmented into separate sites. The draft interim South Devon Biodiversity Offsetting Guidance (2014), to which I give some weight, includes the advice that offsets should be bigger, better and joined up sites and provide a coherent and resilient ecological network. In this case the combined total area of the offset sites is greater than the area which would be lost, and the sites are capable of improving the existing ecological networks within which they are located. The Council's position on this matter was significantly weakened by the fact that the relevant officer had not visited the offsetting sites and was therefore unaware of the way in which three of the four sites link together in ecological terms, as was clear to me on my site visit.
27. Secondly the authority was concerned that the offsetting sites are not close to Abbotskerswell, and therefore would not deliver local offsetting. As the proposed offsetting sites are in another local authority area, management and enforcement were said to be difficult. However the offset sites are within the South Devon Biodiversity Offsetting Area, and there is nothing to suggest that

⁶ LP policies EN8 and EN9

⁷ LP policy EN11

the distance involved precludes their effective use for offsetting, especially as there is an ecological compensation strategy across the wider area and there is a planning obligation in place.

28. Thirdly, the Council stated that the offsetting arrangements need to be underpinned by a detailed management plan. However the Torbay Coast and Countryside Trust has confirmed their control and management of the offset sites, and the involvement of the Trust is covered by the Planning Obligation – which also provides for a financial contribution.
29. Overall, my conclusion is that, when the on-site mitigation and proposed offsetting arrangements are considered together, the development can be adequately mitigated and compensated and would address the concerns of Natural England. The proposal would therefore not harm biodiversity or fail to provide adequate habitat mitigation and offsetting. It would not conflict with the national and local policies summarised above.

Housing matters

30. I will first address the question of whether the authority has a five year supply of specific deliverable sites against their housing requirements, in line with the policy in the Framework. I then deal with the consequences of that position, and finally consider the affordable housing element of the proposal.
31. Historically the LP Inspector's report (2014) stated that, at that time, the housing targets could be met, including a 20% buffer. Matters have moved on since then with the adoption of the LP. The recent evidence set out in the Council's Housing Land Supply Statement (2015) notes a 7.24 year supply of housing sites, based on a 5% buffer. This position is reflected in the Statement of Common Ground.
32. The use of the 5% buffer, as opposed to the 20% figure at the time of the LP adoption, is explained by the authority as it states that it no longer has a record of persistent under-delivery. The appellant questions this position. However the appellant states that even if a 20% buffer were required, the Council could still demonstrate a 6.33 year supply.
33. The Council has referred to a number of appeal decisions which reflect the view that a five year housing land supply exists. The appellant's position is that the Council's stance on the land supply is not questioned, but it is maintained that there is uncertainty over delivery – an example is given of a site at Kingsteignton which is said to be delivering significantly less than the allocation. There is also criticism of the Council's alleged over-reliance on windfall sites and the emergence of NP sites. However Planning Practice Guidance advises that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual appeals - where only the appellant's evidence is likely to be presented to contest an authority's position.
34. In any event, the appellant confirmed at the Hearing that it was accepted that the Council has a five year housing land supply. Under these circumstances, the provisions of paragraph 49 of the Framework do not apply. Given the fundamental conflict with the settlement policies of the LP, I will determine the

- appeal in accordance with the development plan unless material considerations indicate otherwise.
35. Whilst accepting the existence of a five year housing land supply, the appellant referred to the policies for the distribution of the supply which, it was alleged, support housing proposals in rural areas. The distribution of future housing development is largely addressed by LP policy S4, which sets out the approximate distribution of new dwellings between towns. The appellant stated that, as the total only accounts for 90% of the intended delivery, it therefore follows that the remaining 10% is intended to be delivered in rural areas. However I see nothing in the policy which suggests that this is the intention, and I am persuaded by the Council's explanation that the figures are an approximation and that the remaining 10% will be made up by windfalls, conversions and other forms of policy-compliant development.
36. In conclusion on housing land supply it is important to recognise that whilst the site is not currently needed to provide a five year supply of deliverable sites, there is nothing in the Framework to suggest that this represents a cap on development. On the contrary, the Framework states that the supply of housing needs to be significantly boosted, and this is a matter of significant weight in favour of the appeal.
37. Turning to the affordable housing element of the scheme, the Council's statement notes that the start point should be LP policy WE5. This provides that the development of a site for 100% affordable housing in rural settlements would be permitted as a Rural Exception development. The proposal provides only 30% affordable housing, and clearly the scheme does not comply with this policy.
38. However the quantum of affordable housing is in line with LP policy WE2 – dealing with affordable housing site targets. The Council's criticism of the affordable housing element was accordingly that, at the time of the appeal statement and the Hearing, there was a lack of a mechanism to secure delivery. The Council accepted that this could be resolved by a Planning Obligation – which has now been completed.
39. The appellant has submitted an Affordable Housing Statement (and an update) which considers the need for affordable housing as set out in a number of Council documents, including the LP. Most particularly the appellant has suggested that the Housing Needs Survey (2014) was based on a flawed methodology, and that the scale of need of households under 55 years of age has been underestimated. This is a matter to be considered in the context of a review of the LP but, in any event, it can only emphasise the importance of the provision of affordable housing in the development, which I accept should be given significant weight.
40. Overall, I give the provision of general needs and affordable housing, significant weight – which I will balance against other issues in the final section.

Other matters, the planning balance and conclusion

41. I have considered the comments in relation to the appeal decisions at Plumtree Cottage. However each appeal must be decided on the basis of the individual circumstances of the case. In any event, although the Plumtree Cottage case

- had some similarities in relation to the question of housing land supply, the development was significantly different to that before me, as was its location in relation to the settlement boundary.
42. A number of other appeal decisions were drawn to my attention, particularly including a 2015 decision at Broadhempston⁸. However in that case the scale of the proposed development and the size of the existing settlement were very different to the current case, and there were additional issues related to character and appearance and the effect on a Conservation Area. There is little comparison between the schemes.
43. I have referred previously to the Planning Obligation which has been submitted. This covers the provision of 30% affordable housing, 5% custom build housing, management arrangements for the on-site open space and drainage, offsetting arrangements, a contribution towards the offsetting arrangements, a contribution towards secondary school transport, and an on-site public parking area. I have considered all the provisions of the Obligation, and conclude that they are directly related to the proposed development and are necessary to make the development acceptable in planning terms. Therefore I consider that the Obligation meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010.
44. I have considered the representations made by local residents, especially those related to highway safety and flood risk. In particular I have noted the evidence of recent flood events in the village, and I can well understand residents' concerns that the proposal might exacerbate the position. However I am conscious that there have been no objections from the highway authority or the Environment Agency, and that the appellant has submitted technical evidence on both matters. In the absence of other evidence, I do not consider that these are factors on which this appeal should turn.
45. Drawing matters to a conclusion, I give statutory weight to the relevant policies in the LP as I consider, based on the evidence, that they are consistent with the Framework. As the development is in conflict with the locational policies in the development plan, paragraph 14 of the Framework does not apply. However, consideration of sustainability, as assessed in accordance with the Framework as a whole and with LP policy S1A, is still a material consideration.
46. I am guided by the description of the roles of sustainability in the Framework, which should not be undertaken in isolation as they are mutually dependent. There would be a limited economic benefit arising from the development in the short term related to construction employment, and thereafter in relation to the economic base of the area. The provision of general needs and affordable/custom build housing adjacent to a generally sustainable settlement is a clear social benefit, to which I give significant weight, whilst noting the conflict with the locational policy in the development plan. In environmental terms, the biodiversity/habitat proposals and much of the travel provisions are designed to mitigate the impact of the proposal and these elements therefore do not add weight in favour of the proposal. Similarly, I am not persuaded by the evidence that the surface water drainage goes much beyond addressing the consequences of the proposal.

⁸ 2215798

47. Overall, given the fundamental conflict with the policies in the development plan, I do not consider that material considerations, particularly in relation to the provision of housing land, are sufficient to outweigh the conflict with policy.

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

P. J. G. Ware

Inspector

FOR THE APPELLANT:	
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FOR THE LOCAL PLANNING AUTHORITY:	
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Alex Lessware BSc (Hons) DipTP MRTPI	Senior Planning Officer
Amy Luxton Dip TP	Housing Enabling Officer
Mary Rush BSc	Biodiversity Officer

INTERESTED PERSONS:	
Councillor A Dewhurst	County and District Councillor
Councillor Ms M Colclough	District Councillor
Mr K Eales	Chairman, Abbotskerswell Parish Council
Mr D Munden	Chairman, Neighbourhood Plan Steering Group
Mr P Finch	Council for the Protection of Rural England – Devon
Mr D Boxall	Local resident
Ms E Clowes	Local resident
Ms M Burke	Local resident
Mr J Oakley	Local resident
Ms J Draper	Local resident
Mr P Eveny	Local resident
Ms S Emery	Local resident
Mr A Hedge	Local resident

DOCUMENTS:	
Doc 1	List of persons present at the Hearing
Doc 2	Location plan showing offset receptor sites, and extract from adopted Torbay Local Plan
Doc 3	Table showing delivery of housing against targets in Teignbridge 2008-2016
Doc 4	Photographs of December 2015 flooding in Abbotskerswell, submitted by the Parish Council
Doc 5	Planning Obligation (2 March 2016)