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# Appeal Decision

Site visit made on 5 November 2014

**by Paul Griffiths BSc(Hons) BArch IHBC**

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

**Decision date: 27 November 2014**

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**Appeal Ref: APP/R3325/A/14/2224827**

**Land East of Hales Meadow, Mudford, Yeovil**

- 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 Hales Lea against the decision of South Somerset District Council.
  - The application Ref.14/01887/OUT, dated 26 April 2014, was refused by notice dated 25 July 2014.
  - The development proposed is described as 'outline application for change of use to a mixed development of housing with annexed business plus sports hall and community accommodation'.
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## Preliminary Matters

1. The application was made in outline with all matters reserved for future determination. I have considered the appeal on the basis of the details shown on Drawing No.3449/02: Site Plan.
2. Applications for costs have been made by the Council against the appellant, and vice versa. These are the subject of separate Decisions.

## Main Issues

3. The Council cited seven separate reasons for refusal. In that context there is much to address including (1) the principle of development and the policy position; (2) character and appearance; (3) flood risk; (4) the means of access and highway safety; (5) ecology; and (6) heritage matters. There are other, ancillary matters to address too.

## Reasons

### *The Principle and the Policy Position*

4. LP<sup>1</sup> Policy ST3 says that outside the defined development areas of towns, rural centres and villages, development will be strictly controlled and restricted to that which benefits economic activity, maintains or enhances the environment, and does not foster growth in the need to travel. The Council also refers, in general terms, to LP Policy ST5. This outlines a series of criteria against which development will be assessed. Amongst these are (1) which in simple terms seeks to promote patterns of development that reduce the need to travel; and (2) which stresses the need to make efficient use of land, prioritising recycled land, and other appropriate sites, in urban areas.

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<sup>1</sup> The South Somerset Local Plan 1991-2011 Adopted April 2006

5. Criterion (3) deals with the need to conserve biodiversity and environmental assets; (4) the need to respect the form, character and setting of the locality; (5) requires satisfactory means of access and a demonstration that traffic generated can be accommodated on the local network; (6) refers to the need to protect people and property from flood risk; and (7) addresses the necessity to make provision for the infrastructure necessary to service the development or mitigate its impacts.
6. In essence, the appellant says that the LP is out of date and that the Council, having regard to paragraphs 214 and 215 of the Framework<sup>2</sup>, has stated that the policies therein 'no longer hold legal merit'. On that basis, it is said that the proposal should be determined on the basis of the Framework, and paragraph 14 in particular. I have some difficulty with that. The LP Policies referred to above remain extant, having been saved. They remain a constituent part of the development plan and Section 38(6) of the Act<sup>3</sup> requires the determination of planning applications to be made in accordance with the development plan, unless material considerations indicate otherwise.
7. It might be argued that the Framework is such a material consideration but having regard to paragraph 215 of the Framework, that would only be justified if the development plan policies referred to are not consistent with the approach therein. In my view, LP Policies ST3 and ST5 are consistent. Paragraph 49 of the Framework says that relevant policies for the supply of housing, a description that would cover LP Policies ST3 and ST5, should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. If that was established, then the decision-maker would be directed to paragraph 14 of the Framework. However, the appellant puts forward no convincing evidence that the Council cannot demonstrate a five-year supply of deliverable housing sites and, in that context, LP Policies ST3 and ST5 retain their primacy.
8. The appeal site lies outside the defined development areas of any town, rural centre or village. While there would be some economic benefit involved in the proposal, there would clearly be an environmental impact in developing a green-field site – a matter I turn to below – and a development of the scale proposed would obviously foster growth in the need to travel. The latter would not be mitigated to any great degree by the submitted Travel Plan which, as things stand, has been deemed inadequate. On that basis, the proposal is clearly contrary to LP Policy ST3 and criteria (1) and (2) of LP Policy ST5.

#### *Character and Appearance*

9. Mudford is a linear village and notwithstanding interventions at odds with that pattern, notably Hales Meadow and the adjacent recreation ground, this essential character trait remains readily discernible. On the face of it, the proposal would represent development in depth, on a green-field site, beyond Hales Meadow and the recreation ground. This would accentuate the harmful impact previously perpetrated, contrary to criterion (4) of LP Policy ST5. The appellant seeks to use the presence of the development at Hales Meadow and the recreation ground to justify the proposal. However, harmful development permitted in the past, under a different policy regime, provides little justification for more of the same.

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<sup>2</sup> The National Planning Policy Framework

<sup>3</sup> The Planning and Compulsory Purchase Act 2004

### *Flood Risk*

10. Criterion (6) of LP Policy ST5, rehearsed above, bears on this issue. Paragraph 100 of the Framework says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere.
11. Paragraph 101 tells us that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are appropriate sites, reasonably available, in areas with a lower probability of flooding. As the Environment Agency (EA) point out, there are areas of the appeal site that are at risk of flooding and that risk is likely to increase as a result of climate change.
12. Given my conclusions on the first main issue, an overriding necessity for development on the site has not been demonstrated. Even if that necessity had been demonstrated, it has not been shown that there are no more appropriate sites, reasonably available, elsewhere.
13. On that overall basis, it cannot be concluded that the proposal accords with LP Policy ST5, or the Framework, in terms of flood risk.
14. The EA has suggested that if development was to be permitted, then it should be limited to that part of the site in Flood Zone 1, with finished floor levels set no lower than 24.56 m AOD, and of two-storey construction. Such an approach would not overcome the in-principle issues set out above. However, even if that consideration is left to one side, limiting development to Flood Zone 1 by condition would not be a reasonable approach because there is insufficient detail in the application, and associated material, to demonstrate properly that the scope of the development proposed could be accommodated satisfactorily in that part of the appeal site.

### *Access and Highway Safety*

15. Criterion (5) of LP Policy ST5 is relevant and paragraph 32 of the Framework tells us that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
16. Access is a reserved matter but it is clear that it would need to be facilitated from the road bounding the south-west extremity of the site. From what I saw, providing the point of access was chosen carefully, it ought to be possible to design an access to the site that provided adequate visibility in both directions.
17. Moreover, on the face of it, even allowing for the lack of an acceptable Travel Plan, the traffic that the development would generate need not be so great that use of the existing road to, and the junction with, Main Street, where visibility in both directions appears more than adequate, would cause residual impacts that could be described as severe.
18. I accept that such a conclusion depends, to a large extent, on the nature of the proposed sports hall and community accommodation, and the residential element of the proposal. However, any changes that might be required to the junction with Main Street, as a consequence of what came forward, could sensibly be dealt with at reserved matters stage.

19. On that overall basis, I see no difficulty in terms of criterion (5) of LP Policy ST5, or the Framework, in this specific regard at least.

### *Ecology*

20. Criterion (3) of LP Policy ST5 is important in considering potential impacts on biodiversity. Paragraph 109 of the Framework explains that the planning system should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on biodiversity and providing net gains in biodiversity, where possible.
21. Standing behind all that are the requirements set out in Circular 06/2005<sup>4</sup>. Paragraph 99 maintains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development.
22. The appeal site is grassland, bounded in large part by hedgerows, and there is a pond in the middle of it. In that context, it appears to me that there is a reasonable likelihood of protected species, like bats and/or Great Crested Newts, that would be affected by the development, being present on the site. Much debate has centred on the use of the term 'appropriately qualified person', but this rather misses the point. Most importantly, the information put forward by the appellant in support of the application does not include anything that could reasonably be described as a survey for protected species.
23. As such, the likely impact of the proposal on such species cannot be forecast and it cannot, therefore, be concluded that the proposal meets the requirements of LP Policy ST5 criterion (3) or paragraph 109 the Framework. Bearing in mind the advice in Circular 06/2005, planning permission could not properly be granted for the proposal as promulgated.

### *Heritage Matters*

24. LP Policy EH12 stipulates, of relevance here, that planning permission will not be granted for development which would damage or destroy areas of high archaeological potential, or sites where there is good reason to believe there may be remains of archaeological importance, unless the importance of the development outweighs the local significance of the remains.
25. Paragraph 128 of the Framework says that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their settings. Where a site includes, or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

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<sup>4</sup> Circular 06/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*

26. The County Archaeologist drew attention to the ridge and furrow system on the site, and explained that this form of agricultural feature often preserves underlying prehistoric and Romano-British remains. Obviously then, there is the potential for remains of that sort to be present on the site. The information put forward on behalf of the appellant lacks an appropriate desk-based assessment and there has been no adequate field evaluation. Neither does the 'Heritage Statement' properly acknowledge the presence of the ridge and furrow system which is, obviously, a heritage asset, albeit non-designated. Paragraph 4.9 of the 'Heritage Statement' states that the site does not contain any archaeological features or other heritage assets. That is speculative in relation to the former, and plainly inaccurate in terms of the latter.
27. As presented, it cannot be concluded that the proposal complies with LP Policy EH12. Moreover, it is clearly contrary to the requirements of paragraph 128 of the Framework. The balanced judgement required by paragraph 135 of the Framework, when dealing with non-designated heritage assets, cannot be carried out because an assessment of the significance of those assets, whether potential, or readily identifiable, has not been carried out.

#### *Other Matters*

28. Having regard to criterion (7) of LP Policy ST5, The Council draws attention to issues that need to be addressed through an Obligation under s.106. Given that affordable housing is proposed on-site, I am content that the number of affordable units, tenure mix, and implementation, could be properly covered by an appropriately worded condition.
29. What the Council terms 'sports, arts and leisure contributions' involve financial contributions designed to mitigate the impact of the proposed development on these matters. Analysis is complicated because the proposal, as presented, includes a sports hall and community accommodation but, in any event, the appellant has not put forward an Obligation designed to address the Council's requirements, largely on the basis that this could be dealt with at reserved matters stage. I have my doubts about that as an approach but nevertheless, it is a matter of little consequence given that the proposal is unacceptable in any event. I reach a similar conclusion in terms of whether or not the contributions sought by the Council meet the requirements of paragraph 204 of the Framework, or Regulation 122<sup>5</sup>.

#### **Final Conclusion**

30. The proposal could be made acceptable in terms of the means of access and highway safety. Much more weighty however, are the failure to accord with the approach of the development plan to proposals outside defined development areas, and the harm that would be caused to the character and appearance of the area. On top of that, it has not been shown that the proposal is acceptable in terms of flood risk, and that it would not have an adverse impact on archaeology, or other heritage assets, and biodiversity. On that basis, I conclude that the appeal should be dismissed.

*Paul Griffiths*

**INSPECTOR**

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<sup>5</sup> Of the CIL Regulations 2010