
Appeal Decision

Site visit made on 2 December 2015

by Neil Pope BA (Hons) MRTPI

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

Decision date: 10 December 2015

Appeal Ref: APP/R3325/W/15/3063768

Land at Tanyard, Broadway, Ilminster, Somerset, TA19 9JT.

- 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 Mr J V Baker against the decision of South Somerset District Council (the LPA).
 - The application Ref.14/03636/OUT, dated 8/8/14, was refused by notice dated 5/12/14.
 - The development proposed is residential development comprising up to 16 dwellings, associated parking, landscaping and construction of access from Tanyard.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development comprising up to 16 dwellings, associated parking, landscaping and construction of access from Tanyard at land at Tanyard, Broadway, Ilminster, Somerset, TA19 9JT. The permission is granted in accordance with the terms of the application Ref.14/03636/OUT, dated 8/8/14, subject to the conditions in the Schedule below.

Preliminary Matters

2. With the exception of the means of access all matters of detail have been reserved for subsequent consideration. I have treated the submitted layout plan as being illustrative only.
 3. The LPA's reason for refusal expressed concerns regarding the adequacy of information to assess the risk of flooding. Following that decision a Flood Risk Assessment (FRA) and Drainage Strategy along with a Hydraulic Modelling Report was submitted on behalf of the appellant. Having considered these documents the Environment Agency (EA) withdrew its objection and recommended that planning conditions, relating to flood risk / land drainage, form part of any permission. Within its Statement dated August 2015, the LPA informed me that the original reason for refusal has been addressed.
 4. On 5 March 2015, the LPA adopted the South Somerset Local Plan (2006-2028) [LP]. I understand that this supersedes the 'saved' policies of the South Somerset Local Plan (2006) that were listed in the officer's delegated report. (The LPA's decision notice does not identify conflict with any previously 'saved' policies or any policies in the LP which, at that time, was an emerging Plan.)
 5. The LPA's Statement alleges that it has not been demonstrated that there is a proven need for open market properties and "there is no evidence of robust community engagement or general community support." Within this Statement the LPA also contends that there is no mechanism in place for
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delivering necessary affordable housing and financial contributions towards the cost of infrastructure. As a consequence, the LPA has argued that the proposal would conflict with LP policies SS2 (development in rural settlements), SS6 (infrastructure delivery) and HG3 (provision of affordable housing).

6. In September 2015, a Planning Agreement, under the provisions of section 106 of the above Act, was submitted on behalf of the appellant. This Agreement includes the common seal of South Somerset District Council. Amongst other things, it makes provision for 35% of the proposed dwellings to be made affordable, as well as financial contributions towards the cost of infrastructure. The LPA has since conformed that this Agreement now addresses its concerns regarding the delivery of affordable housing, infrastructure provision and conflict with LP policies SS6 and HG3. I shall return to the Agreement below.
7. The LPA has informed me that it cannot demonstrate a five-year supply of housing sites¹. As set out in paragraph 49 of the National Planning Policy Framework (the Framework), housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five year supply of deliverable housing sites.
8. An application for costs has been made by the appellant against the LPA. This application is the subject of a separate Decision.

Main Issue

9. The main issue is whether the proposed development would undermine LP policy SS2 and public confidence in the planning system and, if so, whether this would significantly and demonstrably outweigh the benefits of the proposal.

Reasons

10. Broadway is a settlement to which LP policy SS2 applies. This policy deals with different types of development, including the supply of housing. As noted above, the LPA does not have five years worth of deliverable housing sites. Paragraph 49 of the Framework is therefore engaged. The housing supply provisions of LP policy SS2 cannot therefore be considered up-to-date.
11. In accordance with LP policy HG3, 35% of the proposed dwellings would be made affordable. This would assist in meeting the identified need for affordable housing in this part of the district² and would accord with the social dimension of sustainable development. This is an important benefit which can be given considerable weight in the planning balance.
12. The proposed open market housing would assist in meeting the shortfall in housing supply within South Somerset. I note paragraph 5.32 of the supporting text to LP policy SS2 and the starting premise of 'no development'. In addressing the housing shortfall it would be inappropriate for rural settlements like Broadway to accommodate large-scale housing development.
13. However, up to 16 new dwellings would be a very modest amount of development that would be commensurate with the scale and character of

¹ The LPA's Housing Land Supply Update (September 2015) states that there is only 4 years and 4 months supply.

² I understand that a need exists for 5 units in the parish of Broadway and 8 units in the neighbouring parish of Horton.

- Broadway³. The LPA's Policy Planner advised that Broadway is a sustainable settlement. The proposed mix of affordable and open market housing would increase the overall sustainability of the settlement, including support for key services. The proposal would not undermine the sustainability of Broadway.
14. Moreover, there is nothing to indicate that the housing needs of the local community could be met without some additional open market housing. The proposal would make a valuable contribution to addressing the housing shortfall and to increasing housing choice within the district. This element of the scheme can be given moderate weight in the planning balance.
 15. The development would also support the building / construction industry and during the construction phase there is likely to be a small benefit to the local economy. This can be given some limited weight in the planning balance.
 16. Although the LP was not adopted when the application was determined by the LPA it had reached an advanced stage and policy SS2 was taken into account. My reading of the officer's report is that the case officer gave substantial weight to this policy. As I have noted above, permission was only refused on flood risk grounds. No conflict was identified with LP policy SS2 at that time.
 17. In now arguing that the proposal conflicts with LP policy SS2 the LPA has drawn attention to the local opposition to the appeal scheme. I note the concerns of the Parish Council, some residents and the local Member of Parliament (MP). LP policy SS2 states that proposals should generally have the support of the local community following robust engagement and consultation. I am also mindful of the Government's 'localism agenda'.
 18. The appellant's Statement of Community Involvement sets out the pre-application consultation that was undertaken. This included a presentation to the Parish Council and a public consultation event in the village hall. The Statement also sets out the feedback that was received and the appellant's response. Whilst the Parish Council and some residents remain opposed to the proposed development this does not mean that the appellant failed to undertake robust engagement and consultation with the local community.
 19. I do not set aside lightly the concerns of some members⁴ of the local community. However, most of these concerns are at odds with the technical evidence that has been presented, including the final consultation responses from those with responsibility for such matters as land drainage, highways and ecology. I shall return to these other matters below.
 20. In my experience, it is not unusual for neighbouring residents to raise objections when planning applications / appeals are submitted. Established planning law does not require public support before permission can be granted. For a settlement of the size of Broadway the level of local opposition could not be reasonably be described as substantial or overwhelming. Even if it was, the provisions of LP policy SS2 would not prevent permission being granted.
 21. Whilst 'localism' is an important Government objective the Framework also seeks to boost significantly the supply of housing. Where these cannot be reconciled a decision must be based on the weight of the evidence. I shall undertake the necessary planning balance after considering all matters.

³ I understand that the population of Broadway is about 750.

⁴ There were some (albeit fewer in number) letters of support for the appeal scheme.

22. Some residents are likely to be very disappointed if permission is granted. Nevertheless, others, including the wider public, could find it difficult to comprehend how permission could be withheld for a scheme of residential development in an area where there is a need for affordable housing and a shortfall in the supply of market housing. An approval would be unlikely to significantly undermine public confidence in the planning system.
23. My attention has been drawn to numerous appeal decisions, including some in South Somerset where policy SS2 has been considered. Several of the decisions in South Somerset were based on information, provided at that time, where the LPA was able to demonstrate five years supply of deliverable housing sites⁵. This is materially different to the situation now before me. Whilst I also note the more recent findings of the Inspector who allowed an appeal in Curry Rivel⁶, no two schemes are the same. I have determined this appeal on its own merits. These other decisions do not set a precedent that I must follow.
24. Given all of the above, the proposal would not undermine the provisions of LP policy SS2 or public confidence in the planning system. The LPA would still be able to resist development within the rural settlements, including Broadway, provided it had sound planning grounds for so doing.

Other Matters

25. Some interested parties maintain their concerns regarding flood risk. On their behalf, and at a late stage in the appeal process, the local MP has drawn my attention to an extract from a FRA that was prepared in respect of some neighbouring land⁷. I recognise that residents are likely to be very familiar with incidences of localised flooding. However, it would appear that the extract is the same or very similar to the one from the EA's Flood Zone Map that was included as part of the appellant's FRA. As explained within that FRA, the model used by the EA to produce this Map is more generalised than the one that has been used to inform the appellant's assessment in respect of the appeal site / scheme. This more detailed investigation undertaken on behalf of the appellant demonstrates that only a very small part of the appeal site (the south east corner) lies within Flood Zone 2.
26. There is no cogent technical evidence to refute the findings in the FRA and Land Drainage Strategy that has been prepared on behalf of the appellant. Moreover, this FRA was carefully considered by the EA and the LPA, including the District Council's Engineer. Those responsible for ensuring development does not increase the risk of flooding have withdrawn their objections. In response to the MP's comments the LPA has reiterated that surface water flooding has been assessed and is no longer a matter of dispute with the appellant. The LPA has also advised that the proposal would be likely to improve the drainage of the appeal site.
27. The appellant has demonstrated and it has been accepted by the EA and the LPA that, subject to the use of an appropriate planning condition, the proposed development would not be at risk of flooding or give rise to an increased risk of flooding elsewhere. As a consequence, it would be unsound to withhold planning permission on land drainage grounds.

⁵ APP/R3325/A/14/2218660 and 2224839.

⁶ APP/R3325/W/15/3018532.

⁷ The views of both main parties were sought and obtained in respect of this late representation.

28. The proposed development would increase the volume of traffic along the local highway network. I appreciate that at certain times of the day, such as school opening and closing times, there would be more traffic on the roads than I experienced during my visit. In this regard, I note the photographs supplied by some interested parties showing vehicles parked along the main street through Broadway and along the entrance to Tanyard.
29. However, both the LPA and the Highway Authority would have been aware of local highway conditions when considering the application and the appellant's Transport and Highway report. Neither objected on highway safety / transport grounds. There is nothing of substance to support fears that the proposal would significantly increase congestion or compromise highway safety interests along the local road network.
30. The proposal would change the outlook for some neighbouring residents. As I saw during my visit, for some of those living alongside the site provides very pleasant views of the countryside that surrounds Broadway. I appreciate the concerns regarding the interruption of views that would arise for some neighbouring residents. However, it is a long established planning principle that there is no right to a view across neighbouring land.
31. As part of the reserved matters, the dwellings could be sited so that they would not be overbearing or oppressive for those already living alongside. They could also be designed to avoid any serious overlooking / loss of privacy. The change in outlook for some residents would not justify withholding permission. I note that the LPA did not refuse permission on the basis of the impact upon the living conditions of neighbouring residents.
32. The proposed development would result in the loss of 1.07 ha of countryside along the southern edge of Broadway. The new buildings and internal roads would detract from the pleasing unspoilt open qualities of the site. As acknowledged within the Landscape and Visual Appraisal that accompanied the application, there would be some adverse impacts upon the character of the local landscape and the visual amenities of the area. This would be especially apparent by those using the public footpath at the southern end of the site. These adverse effects weigh against granting planning permission. This carries moderate weight in the planning balance.
33. The proposal would be well-related to the existing settlement and the new buildings could be designed to high standard. A scheme for up to 16 new dwellings would be in keeping with the size and scale of Broadway. The development would include new tree planting and strengthened boundary planting. Those trees and hedgerows that are identified within the appellant's Tree Constraints Plan and Report as "high" and "moderate" quality could be retained and incorporated as part of the detailed layout. This would ensure that the development was well-contained within its landscape setting and go some way to mitigating the landscape and visual impact of the proposal. To reinforce local distinctiveness, the landscaping details could also possibly include an orchard in recognition of the previous use of part of the site.
34. A high quality design that reflected the distinctive qualities in the local environment could be secured via the reserved matters. The proposed development would not be especially prominent within the landscape and would be unlikely to result in any significant adverse impacts upon the character or appearance of the area. I note that the LPA's Landscape Officer identified the

impact as “no more than slight / moderate” and this was “not so strong as to provide an over-riding basis for refusal”. Landscape / visual impact did not form part of the LPA’s reason for refusal. The loss of some ‘greenfield’ land is also an inevitable consequence of accommodating necessary housing growth.

35. The appellant’s Ecological Assessment Report reveals that the proposals would be unlikely to result in any significant effect upon nature conservation interests. Whilst some residents and the Somerset Wildlife Trust have raised concerns, including the impact upon bats, I note that the LPA’s Ecologist was content with the proposals subject to appropriate planning conditions. Development undertaken in accordance with the recommendations contained within the appellant’s Ecological Assessment Report would be likely to avoid any significant risk to nature conservation interests.

Section 106 Planning Agreement

36. The affordable housing obligation accords with the provisions of LP policy HG3 and would assist in meeting the need for housing. It is also compliant with the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. I have therefore taken it into account in determining the appeal.
37. Occupiers of the proposed dwellings could reasonably be expected to make use of local sports and leisure facilities, as well as making use of the village hall and the equipped play area at Broadway and youth facilities. LP policy SS6 allows provision for infrastructure delivery and the consultation response from the LPA’s Leisure Policy Co-ordinator shows infrastructure deficiencies in the parish of Broadway and the costs of addressing this.
38. The financial contributions within the S106 agreement accord with the provisions of paragraph 204 of the Framework. The LPA has also informed me that these would not breach the ‘five obligation limit’ to which Regulation 123(3) of the CIL Regulations applies. I have therefore also taken these obligations into account in determining the appeal.

Planning Conditions

39. I have considered the conditions suggested to me. To avoid duplication and in the interests of concision I have altered the wording of some of the conditions.
40. Conditions requiring the submission of the reserved matters and the commencement of development would be necessary to comply with the relevant provisions of the above Act.
41. For the avoidance of doubt and in the interests of proper planning a condition would be necessary specifying the approved plans.
42. To safeguard the character and appearance of the area conditions would be necessary limiting the development to no more than 16 dwellings and requiring the landscaping details to include the retention and protection of important trees and hedgerows.
43. To avoid any increase in flood risk it would be necessary to attach a condition requiring the development to be undertaken in accordance with the appellant’s FRA and Drainage Strategy.

44. To ensure adequate connectivity with neighbouring development a condition would be necessary to ensure the development was linked to the existing footpath to the south. In the interests of highway safety and the amenity of incoming residents, conditions would be necessary requiring the new estate roads and highway infrastructure to be provided.
45. Conditions would also be necessary to safeguard nature conservation interests. This would include undertaking some further survey work, the maintenance of habitat buffers and a lighting strategy.
46. To safeguard the living conditions of neighbouring residents a condition would be necessary requiring the development to be undertaken in accordance with an approved Construction Management and Environmental Plan.
47. Conditions to the above effect would accord with the provisions of paragraph 206 of the Framework.
48. The car parking arrangements would form part of the reserved matters (layout). A condition requiring details at this stage would be unnecessary.

Overall Conclusion

49. I have found that the proposal would not undermine the provisions of LP policy SS2 or public confidence in the planning system. It would accord with the development plan and the provisions of the Framework when read as a whole. The proposal would comprise sustainable development.
50. Even if there is conflict with LP policy SS2, the adverse effects, including the impact upon the character and appearance of the area, would not outweigh the benefits of the proposed development. Moreover, these effects fall a long way short of significantly and demonstrably outweighing the benefits of the proposal. I therefore conclude that the appeal should succeed.

Neil Pope

Inspector

SCHEDULE OF PLANNING CONDITIONS

1. The development hereby permitted shall not be commenced until detailed plans showing the layout, scale, appearance and landscaping of the site (referred to as the "reserved matters") have been submitted to and approved in writing by the Local Planning Authority.
2. Application for the approval of the reserved matters shall be made not later than the expiration of three years beginning with the date of this permission.
3. The development hereby permitted shall be begun before the expiration of two years from the date of the approval of the last of the reserved matters.
4. The development hereby permitted shall be carried out in accordance with the approved plan 1:1250 scale site location plan (drawing ref. 01) and the 1:250 scale proposed access arrangements (drawing ref. A086696-004.1 Rev A).

5. The development hereby permitted shall comprise no more than 16 dwellings.
6. The development hereby permitted shall be undertaken in accordance with the Flood Risk Assessment & Drainage Strategy dated February 2015 by WYG Engineering Ltd. This shall include: limiting the surface water run-off generated by the 1 in 100 year critical storm so that it will not increase the risk of flooding off-site and; finished floor ground floor levels of the proposed buildings shall be set no lower than 600mm above the 1 in 100 year design flood levels (including climate change).
7. The landscaping details required by condition 1 above, shall include the Recommendations set out in Section 6 of the Doug Pratt Tree Consultancy Tree Constraints Plan and Report dated July 2014. This shall include measures for protecting existing trees and hedgerows growing within the site.
8. As indicated on the illustrative layout, the details required by condition 1 above, shall include a pedestrian link from the public footpath along the southern part of the site to the existing public highway along Tanyard.
9. No development shall commence on site until details of the proposed estate roads, footways, footpaths, tactile paving, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, and street furniture have been submitted to and approved in writing by the Local Planning Authority (LPA). Such approved details shall be constructed and laid out in accordance with the approved details. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the LPA.
10. The development shall be undertaken in accordance with Section 4.0 (Summary of Recommendations) of the WYG Ecological Assessment Report dated August 2014. This shall include: planting locally sourced native species; provision of bird / bat boxes; maintaining an 8m buffer from the River Ding and; protection for bats (including a managed buffer along the eastern hedge), birds and reptiles.
11. The development hereby permitted shall not commence (including any ground works or site clearance) until details of the following have been submitted to and approved in writing by the Local Planning Authority:
 - i) a survey to determine the presence of any slow worms and if present, a mitigation plan or method statement detailing measures to avoid harm to slow worms;
 - ii) an updated survey of badger setts within the site and within 30m of the boundary of any setts, as well as a method statement for protecting badgers.The development shall be undertaken in accordance with the approved details and method statements.
12. No development shall commence until details of a lighting strategy, designed to be sensitive to bats, and the timing of any construction works during the period March to October (inclusive), has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken

in accordance with the approved details.

13. No development shall commence until a Construction Management and Environmental Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include construction vehicle movements, construction operation hours, construction vehicular routes to and from site, construction delivery hours, expected number of construction vehicles per day, car parking for contractors, specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice, a scheme to encourage vehicle share and / or the use of public transport amongst contractors, wheel wash facilities within the site and measures for incorporating pollution prevention. The development shall be undertaken in accordance with the approved Plan.
14. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and the existing highway.