



Appeal Decision

Site visit made on 5 August 2008

by **Jessica Graham** BA(Hons) PgDipL

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

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Decision date:
9 September 2008

Appeal Ref: APP/R3325/A/08/2074895

Land at Copse Lane, Ilton, Ilminster, Somerset TA19 9HA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by South Somerset Homes against the decision of South Somerset District Council.
- The application Ref 07/03952/FUL, dated 22 August 2007, was refused by notice dated 17 April 2008.
- The development proposed is described as "demolition of existing structures and construction of 44 affordable dwellings."

Decision

1. I dismiss the appeal.

Procedural matters

2. While the development described in the planning application proposed 44 new dwellings, the appellant subsequently submitted revised plans detailing 41 proposed dwellings. The Council decided the application on the basis that planning permission was sought for the demolition of the existing buildings and the construction of 41 affordable dwellings, and my determination of this appeal has proceeded on the same basis.

Main issues

3. I consider the main issues to be
 - (a) whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to potential noise and disturbance from the recreation ground, and to security;
 - (b) the impact of the proposed development upon the character and appearance of the area, with particular reference to areas of open space;
 - (c) the effect of the proposal on highway safety; and
 - (d) whether the proposed development would be at significant risk of flooding or would increase the risk of flooding elsewhere.

Reasons

4. The appeal site lies on the outskirts of Ilton, and comprises two areas of existing housing adjacent to Copse Lane. The smaller area, on the northern side of Copse Lane, currently contains a terrace of six two-storey houses with long rear gardens backing on to a field. The larger area, to the south and east

of Copse Lane, is occupied by similar terraced and semi-detached two-storey houses with large gardens. It also includes a hard-surfaced court containing two rows of garages, set back from the road behind an area of grass and a large horse chestnut tree. To the south east of the appeal site is a recreation ground, accessed by a footpath adjoining the garage court.

5. The proposed development would entail the demolition of the existing houses and garages and their replacement, on the smaller area to the north of Copse Lane, with a terrace of four houses fronting the road and a terrace of three houses served by an access road on land to the rear. Development of the larger area would comprise 21 dwellings in two-storey blocks fronting Copse Lane, with a further 13 dwellings served by an internal access road. While the majority of these would be contained in two-storey blocks backing on to the adjacent recreation ground, the dwelling on plot 25, which adjoins No. 32 Penny's Meade, would be a bungalow.

Living conditions

6. The proposed site layout would result in the houses on plot nos. 20-24 facing away from the recreation ground. The rear elevations of these houses, incorporating windows serving bedrooms and kitchen/diner areas, would be set back from the recreation ground behind rear gardens varying in depth from around 7 to approximately 10 metres. The rear of the proposed block of four two-bedroom flats would be only some 2 metres from the north-western boundary of the recreation ground, adjacent to the BMX track. However, I note that the windows in the rear elevation of this block would serve kitchens and bathrooms, not habitable rooms, and no private gardens would be provided for the occupiers.
 7. Policy EP1 of the South Somerset Local Plan 1991-2011 states that noise-sensitive development, such as housing, will not be permitted in the vicinity of noise-generating areas where the proposal would be subject to unacceptable levels of noise nuisance. I saw at my site visit that the recreation ground is an attractive, well-equipped area in a good state of repair. A large number of local residents and organisations have made representations to the effect that use of the recreation ground is high, and I find their evidence convincing.
 8. However, even allowing for heavy usage of the recreation ground, the associated noise would be largely restricted to daylight hours. The intervening rear gardens of plots 20-24, the orientation of the houses and flats and the proposed construction of a 1.8m timber-frame perimeter fence protected by wire mesh and planting would, in my view, combine to reduce potential noise and disturbance to their occupiers. I have not seen any evidence that would indicate the noise levels generated at the recreation ground would reach 'unacceptable' levels in the terms of Local Plan Policy EP1 and the government's Planning Policy Guidance 24: *Planning and Noise*. I conclude that noise and disturbance generated by the neighbouring recreation ground would not significantly harm the living conditions of future occupiers of the proposed development. The proposal therefore satisfies the objectives of Policy EP1 of the Local Plan.
 9. I have also had regard to the impact that the proposed development would have upon the current and future use of the recreation ground. I do not share
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the Council's view that the siting of the proposed dwellings could prejudice the future use of the recreation ground as a play area. However, I agree that the increased number of dwellings proposed by the re-development of the appeal site would generate a need for increased outdoor playing space. No equipped play areas would be provided on the appeal site as part of the proposal, and Policy CR3 of the Local Plan makes it clear that where the on-site provision of outdoor playing facilities is considered inappropriate, a financial contribution should be provided toward off-site facilities instead.

10. The appellant has expressed its willingness to make an appropriate financial contribution, but I have not been provided with a copy of any legal agreement or undertaking to secure payment of the sum calculated by the Council. I note the Council's suggestion that this be addressed by a condition, requiring its prior approval of 'a scheme to ensure that appropriate provision is made for recreational infrastructure'. However, since such a condition would effectively require a cash payment, it would breach the principle that there can be no taxation without clear support in legislation. It would also be insufficiently precise to meet the tests set out in Circular 11/95: *The Use of Conditions in Planning Permissions*. On that basis, it is not open to me to deal with this matter by condition. In the absence, then, of any mechanism to secure the provision of a contribution toward outdoor playing space to meet the additional need generated by the increase in population, I find that the proposed development would fail to meet the requirement of Policy CR3 of the Local Plan.
 11. Turning to the question of security, Policy ST9 of the South Somerset Local Plan states that proposals for new development must be designed to take into account the need for security and crime prevention. The proposed layout of the development to the south of Copse Lane makes provision for public pedestrian access from Copse Lane to the recreation ground, by way of a footpath through the development. While the initial stretch of the footpath between the dwelling on plot 30 and the garden of plot 29 would be reasonably open to public view, the gap between the dwellings on plots 22 and 23 through which it would then pass would be less than 3m wide. There are no windows proposed to the adjoining gable ends of either of these dwellings, and the Council has expressed concern that the consequent lack of surveillance in this area could facilitate anti-social behaviour.
 12. There is scope to incorporate a number of crime-prevention features within the proposed development. However, I am concerned by the lack of information as to how the design of the proposal addresses security concerns about the future occupiers and users of the development. I have no details of the intended lighting and signage of the proposed footpath through the appeal site, and no information as to its future maintenance. The Design and Access statement submitted by the appellant makes reference to a proposed fence across the gables of the dwellings on plots 22 and 23, but does not clarify how this would resolve concerns about the narrow, enclosed nature of the footpath at this point.
 13. There is evidence from the Police Architectural Liaison Officer that there has been a history of anti-social behaviour at the recreation ground. In my view, comprehensive measures to ensure the security of future occupiers of the dwellings, and users of the footpath, should therefore to be integral to the
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design of any proposed development at the appeal site. Such measures play a significant role in ensuring adequate living conditions for future occupiers, and in my view, are too fundamental to the overall acceptability of the scheme to be left to condition. I therefore conclude that the proposed development would fail to satisfy the requirement of Local Plan Policy ST9.

Character and appearance

14. I saw at my site visit that the existing houses on the appeal site, which were constructed from pre-cast reinforced concrete, are somewhat dilapidated and tired in appearance. In my opinion the design and materials of the proposed new dwellings would considerably improve upon those of the existing houses, and would enhance the appearance of their surroundings. The proposed two-storey blocks would present a strong frontage to Copse Lane, and the layout of the internal access road and adjoining dwellings would accord with the residential proportions and character of the area.
15. The proposed development includes the provision of a new area of open space, within the right-angled bend of Copse Lane at the north-western corner of the larger area, but would also result in the loss of the grassed area between Copse Lane and the current garage court. In terms of character and appearance, I consider that the proposed re-development of this grassed space adjoining the garage court would be in keeping with its surroundings, and would not have any significant adverse impact upon the street scene. The proposed layout of the new housing and parking spaces would fit well into the appeal site, and a condition could be imposed to secure the appropriate landscaping, planting and maintenance of the new open space in the north-west corner. To this extent, I find that the proposed development meets the design criteria set out in Policy ST6 of the Local Plan.
16. However, in terms of the use made of the current open space as an informal play area, I am not convinced that the proposed area in the north-west corner would constitute an adequate replacement. It seems to me that the association of this space with the immediately adjoining private parking spaces and residential gardens, together with its disassociation from the access to the recreation ground, would make it far less likely to be used by the public. Further, the proposed development would more than double the existing number of dwellings on the appeal site, and this would generate increased need for casual or informal play space in the area.
17. I consider that this need for outdoor play space could potentially be met by the recreation ground, given its proximity to the appeal site, but only if adequate provision were made to address its additional wear and tear, in the terms set out by Local Plan Policy CR3. As discussed above, I have not been provided with a copy of any legal agreement or undertaking which would secure a contribution toward the recreational infrastructure of the area, and this is not a matter which can be addressed by condition. I therefore conclude that the limited amount of open space provided within the proposed development would conflict with the objectives of Policy CR2 of the Local Plan.

Highway safety

18. The proposed development would provide 65 off-street parking spaces to serve 41 new dwellings: an average of 1.5 spaces per dwelling, which would comply
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with the maximum number of spaces per dwelling permitted under Policy TP7 of the Local Plan. National planning advice, set out in Planning Policy Guidance Note 13: *Transport*, states that developers should not be required to provide more parking spaces than they themselves wish. I am therefore satisfied that the proposal makes provision for sufficient parking space for the use of future occupiers, and in this respect complies with development plan policy.

19. However, Policy ST5 of the Local Plan sets out the requirement that traffic resulting from any proposed development can be accommodated on the local transport network. As regards the current parking area on the appeal site, the evidence of the appellant is that ten of the seventeen garages, and six of the seven garage plots, are occupied. Three of the current occupiers are existing tenants of the appellant, who would be re-housed within the proposed development and so could make use of its integral parking spaces. Of the remaining thirteen occupiers, six are private owners, and seven are tenants of the appellant living in dwellings that would not be included in the proposed re-development.
20. The appellant has indicated that these seven tenants would be provided, where feasible, with replacement off-street parking through the construction of hardstandings within the grounds of their current properties. However, I have not been provided with a copy of any legal agreement or undertaking that would secure the provision of such replacement parking spaces once the existing facilities were demolished. In the absence of such an agreement, or any feasibility study and timetable for provision of these spaces, it is necessary to consider the impact that the loss of thirteen parking spaces would have upon the area.
21. The Highway Authority's professional view is that the thirteen displaced vehicles would be likely to park on Copse Lane, or on the surrounding highway network, and that this would disrupt traffic and create hazards for other road users. In the absence of any convincing evidence to the contrary, I agree with the Highway Authority's assessment that the proposed development would significantly increase the number of vehicles competing for on-street parking in the area, and that this would have an adverse impact upon highway safety. I conclude that the scheme would therefore fail to comply with Local Plan Policy ST5.

Flood risk

22. Paragraph 22 of Planning Policy Statement 25 (PPS 25): *Development and Flood Risk* explains that it is the responsibility of the developer to demonstrate that proposed development is consistent with policies on flood risk set out in the Local Plan. This usually involves the submission of a Flood Risk Assessment (FRA) detailing whether the development is at risk of flooding or could increase flood risk elsewhere, and setting out the measures proposed to address any such risk. The evidence of the Council, which is supported by the representations of the Parish Council and local residents, is that there are known flooding issues to the south of the appeal site concerning surface water drainage capacity. Annex E of PPS 25 makes it clear that in such circumstances, a FRA will be required.

23. No FRA has been submitted by the appellant, who has explained that the requirement for an FRA was not communicated until a few days before the Council's determination of the application, which left insufficient time to respond. While I accept that this may well have been the case, it does not obviate the appellant's responsibility to demonstrate whether the proposed development would be at risk of flooding or increase flood risk elsewhere. The appellant has not submitted, during the course of this appeal, any further information on potential flood risk at the appeal site.
24. The proposed development would entail a considerable increase in the proportion of the appeal site covered by non-permeable surfaces. On the basis of the information provided, and in the absence of any detailed assessment of the current and future flood risk and the potential for mitigation, I cannot discount the risk that the proposed development could exacerbate existing drainage problems and increase the risk of flooding elsewhere. I therefore conclude that this proposal would conflict with Policy EU5 of the Local Plan.

Conclusion

25. I find that the proposed development would provide much-needed affordable housing for the district and would have a positive impact upon the character and appearance of the area, and that its proximity to the recreation ground would not compromise the living conditions of future occupiers. However, I consider these benefits to be outweighed by the harm that would arise from the proposal's failure to make any contribution to the provision of outdoor play space, its failure to make adequate provision for security and crime-prevention at the appeal site, and the adverse impacts it would have upon highway safety and the risk of flooding in the locality.
26. For the reasons given above I conclude that the appeal should be dismissed.

Jessica Graham

INSPECTOR



Appeal Decision

Site visit made on 22 July 2008

by **Mike Robins** MSc BSc (Hons)

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

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Decision date:
14 August 2008

Appeal Ref: APP/R3325/A/08/2070612

OS field 6171, Thorney, Langport, Somerset TA10 ODR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Judith Drewell against the decision of South Somerset District Council.
- The application Ref 07/03413/FUL, dated 14 July 2007, was refused by notice dated 24 September 2007.
- The development proposed is a 25 metre x 15 metre hardstanding.

Decision

1. I allow the appeal, and grant planning permission for a 25 metre x 15 metre hardstanding at OS field 6171, Thorney, Langport, Somerset TA10 ODR in accordance with the terms of the application, Ref 07/03413/FUL, dated 14 July 2007, and the plans submitted with it.

Procedural Matters

2. The address given in the application form was not precise and I have used that provided in the appeal documentation for clarity. The hardstanding has already been created and consequently I was able to view the proposal during my site visit.

Main issue

3. Whether the proposal would increase the risk of flooding.

Reasons

4. The appeal site is next to a drainage ditch and within an area of grassland accessed from a track from the village of Thorney. It comprises a small area of hardcore, with an estimated depth of 0.25-0.5 metres, which has begun to vegetate over. The site is part of the West Moor Site of Special Scientific Interest (SSSI), and is in the flood plain.
5. The loss of flood storage within a flood plain will have an impact on the levels of flooding elsewhere, and Policy EU5 of the South Somerset Local Plan, adopted 2006, (the Local Plan), states that land raising will not be permitted without adequate mitigation. In this case the Environment Agency (EA) have received a Flood Risk Assessment, submitted after the Council's decision, which has led to them accepting that the deposit of this material will not adversely affect flood risk.

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6. Notwithstanding this, such deposits should normally be removed as cumulatively they could contribute to a more significant impact on flood risk elsewhere. However, Natural England has stated that the removal could result in harm to the SSSI, and this position is supported by Council officers. I concur, in that access is limited to the site for appropriate machinery and, although the hardstanding is predominantly on grassland, it is adjacent to the drainage rhyne and an area of more natural vegetation.
7. In light of this position and the very small volume of material and associated loss of flood storage, I conclude that the minor increase in risk and consequential non-compliance with the Local Plan policy is outweighed by the potential impact on the SSSI. I also consider that the very small volume of material, combined with the position of the Statutory Agencies on this matter, are such that this would not form any sort of precedent for other deposits of material in flood plain areas.

Conditions

8. I have considered the conditions recommended by the EA and the proposed restrictions from the appellant, against the requirements of Circular 11/95. The material has already been deposited and there are no buildings on the site. Any further deposit on, or development of this site would require planning permission and therefore the conditions are unnecessary.
9. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR

