



Appeal Decision

Site visit made on 29 August 2012

by Christopher Gethin MA MTCP MRTPI

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

Decision date: 21 November 2012

Appeal Ref: APP/R3325/A/12/2176346

2 Belle Vue, Silver Street, Misterton, Crewkerne, Somerset TA18 8NJ

- 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 I Norris against the decision of South Somerset District Council.
 - The application ref. 11/05037/OUT dated 5 December 2011 was refused by notice dated 14 March 2012.
 - The development proposed is a detached dwelling.
-

Decision

- 1 The appeal is dismissed.

Main Issues

- 2 The principal issues are
 - a) the effect of the proposed development on the character and appearance of the area
 - b) its effect on the living conditions of the occupiers of 2 Belle Vue and Brambly Hedge Cottage; and the living conditions of the prospective occupiers of the proposed dwelling
 - c) its effect on highway safety.

Reasons

Character and appearance

- 3 The appeal site comprises the whole of the side garden of a semi-detached, Victorian two-storey house in a residential street. The side garden provides the only private amenity space for the dwelling.
- 4 The proposal was made in outline with all matters reserved. However, an indicative plan, and the Design and Access Statement, show a two-bedroom dwelling set slightly back from the footway, on the same building line as Belle Vue. It would be located approximately midway between no.2 and the adjoining house, Brambly Hedge Cottage. The existing access for no.2 would provide access to two parking spaces to serve both properties.
- 5 The proposed development would leave no.2 with a curtilage little larger than the dwelling itself, and a large part of the rear amenity space of the new house would be taken up with shared turning and parking space for both dwellings.

The lack of private amenity space for no.2, and the restricted area available for the new dwelling, would be out of keeping with the character of the area, which is defined by dwellings with adequate or generous outdoor amenity space. Both dwellings would appear cramped on their restricted sites.

- 6 I conclude that the proposed development would harm the character and appearance of the area, contrary to 'saved' Policies ST5 and ST6 of the 2006 South Somerset Local Plan, which remain part of the development plan for this area. The 2012 National Planning Policy Framework makes clear that the definition of 'previously developed land' excludes land in built-up areas such as private residential gardens. Local Plan Policies ST5 and ST6 are consistent with the relevant core principle of the Framework – that planning should seek to secure high quality design. This principle is not addressed by the subject development, the design of the layout being unacceptable.

Living conditions

- 7 No.2 Belle Vue is a three-bedroom house. Although the appellant states that as the owner of the dwelling he does not need a garden, I consider that a family house such as this needs at least a basic amount of private amenity space. The proposed development would leave it with little, if any.
- 8 The area to the rear of the proposed dwelling might be largely taken up with parking and turning areas. There would be little room for private amenity space. Bearing in mind the location of the appeal site in a rural village, I consider that this would offer unacceptably poor living conditions for the prospective occupiers of the dwelling, notwithstanding the intention to make it available for a low-income family.
- 9 The flank wall of Brambly Hedge Cottage defines the boundary between this property and the appeal site. There is a single ground-floor window in this elevation. The proposed dwelling would not significantly reduce the light received by this window. While there would be some loss of outlook and a slight overbearing effect, these would not comprise a reason for preventing the proposed development in such circumstances where a window gives directly onto an adjoining property.
- 10 I conclude that the proposed development would harm the living conditions of the occupiers of no.2, in terms of depriving them of a sufficient area of outside amenity space to meet their likely needs. It would offer the prospective occupiers of the proposed dwelling an inadequate area of private amenity space. In these ways it would be contrary to Policy ST6 of the Local Plan, and to the relevant core principle of the Framework, which states that planning should seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Highway safety

- 11 I note that the Highways Authority has maintained its objection to the proposed development in its appeal representation. I saw at my site visit that sightlines from the proposed shared access are acceptable towards the right, but were restricted towards the left by the presence of parked cars. However, in such circumstances it would be safe to emerge (in forward gear) to a point where one could see past the parked cars. Bearing in mind the absence of a footway, I consider that reversing manoeuvres into the highway would be hazardous for other road users.

- 12 The Highways Authority indicates that the proposed provision of two parking spaces would be inadequate in relation to the Parking Strategy it refers to, which requires two spaces for each dwelling. If four spaces were to be provided, I consider that there would be inadequate space within the appeal site to allow for turning manoeuvres. This would give rise to the likelihood of vehicles needing to be reversed into the public highway and of additional on-street parking, with consequent hazards for highway users.
- 13 The Highways Authority requires that a shared access serving two dwellings should be at least 5m wide, so as to allow two vehicles to pass. The existing access is about 2m wide, so that conflicting manoeuvres would be likely to occur, interrupting the free flow of traffic. I acknowledge the appellant's survey figures for traffic flows in Silver Street: however, the harm that I have identified from reversing and conflicting manoeuvres would also arise if traffic flows were at the levels indicated by this survey.
- 14 I conclude that the proposed development would be likely to result in hazardous conditions for highway users, contrary to Policy ST5 of the Local Plan.

Conclusion

- 15 The harm I have identified outweighs the benefit which would result from the proposal in terms of providing a new dwelling in a sustainable location. While other developments have been referred to, each application and appeal is determined on its individual merits, within the context of the site-specific circumstances and the planning policies which pertain to it. This is how I have assessed the proposed development.
- 16 For the reasons given above, and having regard to all other matters raised, I conclude on balance that the appeal should not succeed.

Christopher Gethin

INSPECTOR



The Planning Inspectorate

Quality Assurance Unit
Temple Quay House
2 The Square
Bristol, BS1 6PN

Direct Line: 0117 372 8252
Customer Services: 0117 372 6372

Mr David Norris
South Somerset District Council
The Council Offices
Brympton Way
Yeovil
Somerset
BA20 2HT

Your Ref: 11/04212/FUL
Our Ref: APP/R3325/A/12/2176355/NWF
Date: 29 November 2012

Dear Mr Norris

**Town and Country Planning Act 1990
Appeal by Redrow Homes South West
Site at Land At Mitchell Gardens, Chard, TA20 1QU**

I enclose a copy of our Inspector's decision on the above appeal together with a copy of the decision on an application for an award of costs.

If you have queries or complaints about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback. This page also contains information on our complaints procedures and the right of challenge to the High Court, the only method by which the decision can be reconsidered.

If you do not have internet access, or would prefer hard copies of our information on the right to challenge and our complaints procedure, please contact our Quality Assurance Unit on 0117 372 8252 or in writing to the address above.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

You should also note that there is no statutory provision for a challenge to a decision on an application for an award of costs. The procedure is to make an application for judicial review. This must be done promptly. Please contact the Administrative Court for further information.

Yours sincerely



Amanda Baker

COVERDL2

You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -
<http://www.pcs.planningportal.gov.uk/pcsportal/casearch.asp>
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



Appeal Decision

Inquiry held on 16, 17 and 18 October 2012

Site visit made on 18 October 2012

by John Wilde C.Eng M.I.C.E.

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

Decision date: 29 November 2012

Appeal Ref: APP/R3325/A/12/2176355

Land at Mitchell Gardens, Chard, Somerset, TA20 1QU

- 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 Redrow Homes Southwest against the decision of South Somerset District Council.
 - The application Ref 11/04212/FUL, dated 17 October 2011, was refused by notice dated 26 April 2012.
 - The development proposed is sixty one residential dwellings, with associated vehicular and pedestrian access, landscaping, site re-grading and related infrastructure and engineering works.
-

Decision

1. The appeal is allowed and planning permission is granted for sixty one residential dwellings, with associated vehicular and pedestrian access, landscaping, site re-grading and related infrastructure and engineering works at Land at Mitchell Gardens, Chard, Somerset, TA20 1QU in accordance with the terms of the application, Ref 11/04212/FUL, dated 17 October 2011, and the plans submitted with it, subject to the conditions contained within the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by Redrow Homes Southwest against South Somerset District Council. This application is the subject of a separate Decision.

Procedural matters

3. The proposed development was amended between the submission of the planning application and the Council's decision. The description of development given in my decision is therefore that given in the Council's decision letter, which was the subject of the Inquiry, and not that given on the planning application form.
4. During the Inquiry it became clear that the highway witness for the Council was unable to appear. The Council therefore requested an adjournment. This was contested by the appellant who offered instead to withdraw his highway witness such that the two highway proofs of evidence could be taken 'as read'. I accepted this as the fairest and most efficient course of action.

Main Issues

5. The main issues are whether or not the proposed development:-
 - (a) Would accord with current national and local (extant and emerging) planning policy regarding development in the open countryside.
 - (b) Would provide well designed high quality homes that would create an inclusive and mixed community.

Reasons

6. The appeal site lies to the west of Chard town centre and is outside of the development boundary of the town. It is however only about 500m from the central area of the town and therefore in transport terms can be considered to be in a sustainable location. The proposed development would result in the building of sixty one dwellings accessed from the existing Mitchell Gardens development to the south-east of the site.

Policy issues

7. The National Planning Policy Framework (the Framework) makes clear in paragraph 47 that local planning authorities (LPAs) should provide five years worth of housing against their housing requirements with an additional buffer of 5% moved forward from later in the plan period. Paragraph 49 of the same document states that where an LPA does not have a five year housing supply then relevant policies for the supply of housing should not be considered to be up to date.
8. It is common ground between the main parties to this appeal that the Council have only about a three year housing land supply. It follows that any housing supply policies should be considered to be out of date.
9. The Framework also makes clear in paragraph 14 that there is a presumption in favour of sustainable development and that where a development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh any benefits, when assessed against other paragraphs in the Framework taken as a whole. I will return to the issue of sustainability later in my decision.
10. The development plan documents most relevant to the present case consist of the South Somerset Local Plan 1991-2011 (LP) and the Somerset and Exmoor National Park Joint Structure Plan Review 2000-2011 (SP). Both plans are therefore time expired. However, various policies of both plans were saved by direction of the Secretary of State, in 2007 for the SP and 2009 for the LP.
11. In their decision letter the Council refer to only one policy in respect of the first reason for refusal. This policy is policy ST3 which states 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.*
12. Had this policy been purely a housing land supply policy then under paragraph 49 of the Framework it would be considered to be out of date, a

conclusion arrived at by the Inspector in a recent appeal at Wincanton¹. It also forms part of a time expired development plan publication that began life over twenty years ago. However, as the Council have pointed out, the policy has sustainability aspects which are in line with the general thrust of the Framework, and consequently I consider that it should be afforded some weight. It follows that as the proposed development is outside of a defined development area, some conflict with this policy exists.

13. Notwithstanding any limited weight that can be afforded to this policy however, it is clear that in light of the age of the development plan and lack of a five year housing supply, paragraph 14 of the Framework is a material consideration of substantial weight.
14. This paragraph, as outlined above, makes clear that *permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh any benefit*. In respect of adverse impacts the Council have pointed to the effect that the proposed development would have on their regeneration strategy for Chard, which is enshrined in the emerging local plan, entitled the Proposed Submission South Somerset Local Plan 2006-2028 (PSLP). Policies PMT1 and PMT2 are the relevant ones within the PSLP with respect to the regeneration of Chard. The former of these confirms that land at Chard is allocated for 3237 dwellings, employment land, neighbourhood centres, two primary schools and highway infrastructure improvements, whilst the latter details the phasing, with 1861 houses being built within the plan period and 1376 beyond that period.
15. The Chard Regeneration Strategy (CRS) is underpinned by a number of documents including A Vision for Chard (September 2010), The Chard Regeneration Plan (September 2010) (CRP), the Chard Implementation Plan (October 2010) and the Strategic Transport Appraisal Report (August 2010). The CRS has been the subject of collaborative working between, amongst others, the Council, Somerset County Council, Chard Town Council and a Community Forum and Town Team, although I acknowledge the appellant's comments that they have not been invited into a formal consultation process, only a public meeting that appeared to them as a fait accompli.
16. The CRP presented four options for growth in the town. Option three was considered to be the most sustainable and comprises a full build out of the eastern growth area (the Chard Eastern Development Area CEDA) that would include over 1800 houses within the plan period as well as land for employment purposes and also new highway links. This would be accomplished in several phases and would be designed to ensure that each phase could be completed whilst at the same time ensuring that road and other infrastructure was implemented to support the growth. The appeal site would not be included within option three as it is on the west side of the town centre.
17. The approach the Council have taken in formulating a clear growth strategy is in line with one of the central tenets of government policy as stated in Paragraph 1 of the Framework, where it makes clear that the National Planning Policy Framework *provides a framework within which local people and their accountable Council's can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities*.

¹ APP/R3325/A/12/2170082

18. As I have stated above the CRS has informed the PSPL. The PSLP has been the subject of consultation and the objections are now being considered. I note that there are several objections to policies PMT1 and PMT2. The Council intend to submit the document for Examination in Public towards the end of this year and it was agreed by them during the Inquiry that there is a fourteen week period from submission to the likely examination. There would then have to be the consideration of the objections and possible modifications. The Council consider that the PSPL could be adopted by summer 2013, but given the stages yet to be undertaken, I consider that to be optimistic, and consequently the weight I can afford to the PSPL is limited. It was also... accepted by the Council during the Inquiry that the CRS is most unlikely to provide any significant level of housing until 2016/17.
19. I also note that whilst a verbal agreement between the developers involved in the CEDA has been forthcoming, there are still significant hurdles to be overcome before implementation can occur. Amongst these are the need for a comprehensive masterplan and implementation programme and the potential need for compulsory purchase orders to be undertaken. These matters may well delay the start of house building.
20. I am also aware that the appeal site was identified as suitable for housing in the Council's Strategic Housing Land Availability Assessment (SHLAA) where it was considered as *suitable and available*, although it had been put back due to *access difficulty and trees on frontage*. These latter anticipated problems have however been overcome in the proposed development. I accept that a SHLAA is not a development plan document and cannot be afforded weight as such, but it is nonetheless an indication that the site has previously been considered and found suitable for residential development.
21. My attention has been directed to *The Planning System: General Principles 2005* which in paragraph 17 states that *in some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting planning permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new developments which are being addressed in the policy in the DPD.*
22. However, the proposed development is for only 61 houses as compared to over 1800 proposed within the emerging plan period. I cannot therefore accept the proposed development as being so significant that it could prejudice the DPD. As regards a cumulative effect, any other proposals that may come forward prior to the adoption of the PSLP would have to be considered on their own merits in terms of their size, sustainability and other factors.
23. My attention has also been directed to a number of cases decided in the High Court, where the Judges agreed with Inspectors' decisions to dismiss appeals based on prematurity considerations. One of these concerned an appeal in Earl Shilton², Leicestershire, where an Inspector found that the harm caused by a proposed development in respect of undermining an emerging policy would not be outweighed by the need for housing. The Inspectors decision was upheld in

² APP/K2420/A/10/2136529

a judgement in the High Court. I note however that this development consisted of 200 units.

24. A second judgement concerned *Fox Strategic Land and Property Ltd v Secretary of State for Communities and Local Government*. Here the proposed scheme comprised of 280 dwellings. Thirdly, I have been directed to *Wainhomes (South West) Holdings Limited v Secretary of State for Communities and Local Government*. This was however for 1300 homes with associated development including a school, transport hub and care home. All of these schemes involved housing on a different scale to that which is before me, and I also note that the decisions were made prior to the introduction of the Framework. I cannot therefore take these as compelling precedents for dismissing the current appeal.
25. One of the major factors in the consideration of the CRS was the limited traffic capacity at the junction of the A30 and the A358 which is situated just to the east of Chard town centre. This factor has had a significant influence on the Council's consideration of the appeal proposal, and its conclusion that the site should not be developed. The capacity of this junction, known as the Convent Junction, is seen as a major factor in the regeneration of Chard. Recently a MOVA³ signal control system has been incorporated into the traffic lights at this junction as a way of increasing capacity. The Council's contention is that the traffic generated by the appeal site would have such a detrimental effect on the capacity of this junction that it would prejudice the CRS.
26. A survey undertaken at the Convent Junction on the same day of the year in 2011 and 2012 of queue lengths before and after the introduction of MOVA has been supplied by the appellants. The survey shows a reduction in overall queuing in both morning and afternoon peak periods of about 30%. The highway authority have more recently (5 September) taken a further survey of queue lengths that they have then compared to the 2011 queue lengths supplied by the appellants. The recent survey shows an 8.6% increase in the average maximum queue length in the morning peak period and a 20.5% reduction in the afternoon peak period.
27. I note however that the two surveys utilise differing techniques in terms of the measurement of the queue lengths. This means that comparing the highway authority's recent queue lengths to those taken in 2011 by the appellant is not necessarily comparing like with like. I have also been supplied with information that indicates that the figures given in tables 3.1 and 3.2 of the recent survey have not been transposed accurately from the graphs of the minute by minute survey results shown in appendix A. In light of this I can give only limited weight to the recent survey results and their interpretation.
28. The highway authority conclude in their recent survey that the Convent junction is *operating within capacity*, although they then add the caveat that with the available data it is *difficult to show how far within capacity*. In this respect I note that Transport Advisory Leaflet 03/97 (TA 3/97) states that MOVA reduces delays by an average of 13% compared to vehicle actuated systems. It seems to me therefore that based on the above figures, it can be concluded that the Convent Junction, with the introduction of MOVA, currently has a reasonable amount of spare capacity. This is confirmed in the evidence given by the Council where they state that, with respect to the Convent

³ Microprocessor Optimised Vehicle Actuation

- Junction, that the MOVA has the potential to add capacity for between a further 100 and 240 vehicles in peak times, which gives an average of 170 vehicles.
29. The Council have used figure 6.2 of the appellants' Transport Assessment to show that the proposed development would generate 36 trips in the A.M. peak hour and 37 in the P.M. peak hour through the Convent Junction. This would therefore represent about 20% of the average capacity increase taking their mid point figure given above.
30. The appellant has used a SATURN traffic model to show that initially with the introduction of the proposed scheme and phase one of the Chard Regeneration Scheme there would be an increase in the peak hour total traffic flows through the Convent junction of only 15 to 16 vehicles, which equates to only about 0.9% of the overall flow, and 9% if the above figure of 170 vehicles is accepted.
31. It would seem therefore that in the worst scenario, the proposed development could remove 20% of the increase in capacity generated by the installation of MOVA. Whilst this would undoubtedly remove some of the capacity the Council see as destined for the CRS, I am not persuaded that such a decrease in capacity would seriously jeopardise the overall future of the CRS to such an extent that the appeal should be dismissed on this ground.
32. In arriving at this conclusion I note the Council's point that any small increase in traffic through the junction would be significant if the junction was currently running at or very near capacity. However, I cannot accept the premise that this is the case. I also note that phase 1 of the CRS, the town centre improvement, and other extant planning permissions may take some further capacity. However, any extra trips generated by the town centre improvement have not been accurately quantified, and there is no guarantee that the extant sites will come forward. In relation to MOVA I have also noted that the introduction to TA 3/97 states that *on-going research should deliver further improvements in the future.*
33. I now return to the matter of sustainability. I have already indicated that the appeal site is in a sustainable location in transport terms. However the Framework makes clear in Paragraph 7 that sustainable development has two other dimensions, namely economic and social. The proposed development would provide both market housing and Affordable Housing which would to an extent fulfil a social role. With respect to the provision of Affordable Housing I note that in a Council Executive Bulletin dated 13 April 2012 it is stated that *Chard has consistently been the location of greatest housing need in the district outside of Yeovil. However, the opportunities for new affordable housing schemes in Chard have been constrained and in the past three years only ten new homes for rent have been completed.* There is therefore an identified need for Affordable Housing in the town.
34. Any economic role would be afforded by the jobs provided in the construction phase and in the amount of money spent in the community by future residents. I accept that these latter aspects are not highly significant but nonetheless overall consider that the proposed development could be described as sustainable. I will now move on to the second main issue before arriving at an overall conclusion.

Design

35. The Council's second reason for refusal related to the design of the proposed development in terms of both its layout, the distribution of the Affordable Homes and the appearance of several of the proposed houses. I will deal with each of these matters in turn.
36. The layout of the estate would be that typical of mid-late twentieth century, comprising of a winding cul-de-sac with branches off. The Council consider that this would not promote legibility or permeability and they would rather see a more gridded network, an example of which is given on page 59 of the Chard Regeneration Plan. This example is however very diagrammatic. It shows houses right at the top of the appeal site impinging upon the trees that are subject to preservation orders, and curves in the road network that would be un-driveable. Whilst this form of layout could be construed to be more permeable for drivers I am not persuaded that it would be any advantage to cyclists or pedestrians, as it would be likely to create a more car dominated environment. Furthermore, it is a fact that winding cul-de-sac layouts are part and parcel of the character and appearance of Chard at the start of the twenty first century, and there are many such examples to the south-east of the appeal site.
37. As regards some of the Council's more specific points with respect to legibility and permeability, I accept to an extent that the walking routes through and into and out of the development are not as easily read as perhaps they could be due to their placement and the presence of parking areas. I am not persuaded however that these matters would impinge upon the future residents in such a detrimental way as to justify dismissing the appeal.
38. The Council also had concerns with the fact that fenestration detail would differ between the front and other elevations of many of the proposed houses, and that in a few cases the finishing to a front elevation would not wrap around to side elevations that would be seen from the public realm. The principle of more ornate fenestration to a front elevation is not however uncommon, and it was shown during the Inquiry that the number of properties without the wrap around feature whose side elevations would be visible would be very small. These matters are to my mind not of sufficient magnitude such that they can be instrumental in my overall decision.
39. The proposed development would contain 21 Affordable Homes which would be located predominately in four blocks on the north-west and east boundaries of the site. The Council would prefer that these homes were 'pepper-potted' around the site and to justify this they point to several policies within the Framework, including paragraph 50 which requires the creation of mixed and balanced communities.
40. The proposed Affordable Houses are however located in prime positions nearest to pedestrian routes into the town centre. There are other examples of similar clustering in Chard and the relevant housing association has confirmed that the proposed arrangement is preferable in respect of management and maintenance. Furthermore, I have not been directed to any specific policies that require Affordable Homes to be 'pepper-potted'. I consider therefore that the relatively small number of Affordable Homes proposed, in the location that they are proposed, would not go against the ethos of the creation of mixed and balanced communities.

41. In addressing the issues of design and layout of the site I have been mindful of the advice given in various publications such as *By Design, Better Places to Live*⁴ and *Manual for Streets*, which have raised the bar for the design of residential estates. I am also conscious however that there are many aspects of the design of the proposed development that have been accepted by the Council and which point to good design. These include the areas of open space, the design of the front elevations of the houses, the change in density through the site with the north-east and east terraces respecting the adjacent townscapes, the lack of identified harm to the adjacent conservation area and the retention of the trees subject to TPOs.
42. I am also aware that paragraph 59 of the Framework makes clear that design policies should avoid unnecessary prescription or detail and that paragraph 60 states that planning policies and decisions should not attempt to impose architectural styles or particular tastes.
43. Overall, none of the various design issues identified above, taken either individually or cumulatively, lead me to a conclusion that the proposed development would be in conflict with the aims and objectives of chapters 6 and 7 of the Framework.

Conclusion on main issues

44. The Council do not have a five year supply of housing land and the LP is dated. The Framework makes clear in paragraph 14 that there is a presumption in favour of sustainable development and that where a development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh any benefits. I have also found that the proposed development would be sustainable, would not be in conflict with the Framework on design issues, and that the appeal site formed part of the SHLAA.
45. Against this has to be balanced the fact that the Council have developed a regeneration strategy for Chard in cooperation with the local residents and other interested parties, and that in light of my conclusion regarding policy ST3, some conflict with the development plan still exists. Importantly however, the CRS is unlikely to produce significant numbers of dwellings until 2016/17 at the earliest. Furthermore, I have found that the traffic generated by the appeal development in relation to the capacity of the Convent junction would not be likely to be so harmful as to disrupt the introduction of the CRS. It follows that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the new market and Affordable Homes that would be delivered by the proposed development. Nor do I consider that the limited conflict with policy ST3 outweighs the benefits of the proposed development. Consequently I conclude that the appeal should be allowed.

Other matters

46. The Council requested a range of contributions to mitigate the effects of the proposed development on local infrastructure. These contributions can broadly be divided into two categories, local and strategic. The appellant has raised no objection to the request for contributions towards local infrastructure but has questioned the required contributions towards strategic infrastructure. I have

⁴ Published by the Commission for Architecture and the Built Environment/Department of Transport, Local Government and the Regions

therefore been supplied with two signed and dated Unilateral Undertakings (UU), one of which includes the strategic contributions and one which does not. The local infrastructure includes equipped play space, youth facilities, playing pitches and changing room provision. The strategic infrastructure includes theatre and arts, synthetic turf pitches, swimming pools, indoor tennis centre and sports hall provision.

47. Regulation 122 of the Community Infrastructure Levy regulation (CIL) 2010 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
48. The Council have supplied me with a document from their Community Health and Leisure Unit which shows the deficiencies in square metres within the Council's area for the various categories identified above, in both 2009 and as projected for 2029. This document also shows the need that would be generated by the proposed development and outlines the various relevant policies. I have also been supplied with a document that shows the cost of the various items of infrastructure that are being sought, which in turn provides a cost of the provision per person.
49. It seems to me that in identifying deficiencies the Council have shown that contributions are necessary to make the development acceptable in planning terms and in showing a mechanism for the cost per person have shown that the contributions would be fairly and reasonably related in scale and kind. With respect to the required strategic contributions the appellant expressed particular concern regarding the distance to the theatre which would be in Yeovil.
50. However, Yeovil is only about half an hours car journey from Chard and I do not think it improbable that future residents of the site would be prepared to make this length of journey for an evenings entertainment, or for that matter to access an indoor tennis centre. Other strategic facilities would involve the improvement of facilities already within Chard or the provision of new more centrally placed facilities. Overall, on the information before me, I conclude that the required contributions for both local and strategic infrastructure comply with the requirements of CIL Regulation 122 and that the UU which contains these contributions can be taken into consideration in my decision.
51. I am aware that several local residents have expressed concern regarding the impact of the proposed development on the wider highway network, and not just on the Convent Junction signals. I note however that the highway authority has raised no objections and that the junctions in the area of the site all have good visibility. Overall I have been given no significant evidence to suggest that there would be an adverse effect on the local highway network in terms of safety or significant congestion. I accept that there would be an increase in traffic using the existing Mitchell Gardens, but this road is wide enough to accommodate two lanes of traffic as well as parking on one side. This matter does not therefore lead me to a different conclusion to that which I have outlined above.

Conditions

52. The conditions set out in the accompanying schedule are based on those outlined by both parties at the Inquiry. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in Circular 11/95 - *The Use of Conditions in Planning Permissions*.
53. In the interests of the final appearance of the development I have imposed conditions requiring further details to be submitted of the materials to be used in the external surfaces of the houses; the rainwater goods and fascia boards; the proposed boundary treatment, and hard surfacing materials and the soft landscaping. For the same reason I have imposed a condition that will ensure the protection and retention of existing trees.
54. To facilitate highway safety I have imposed conditions relating to the detailed design of the proposed road layout. In the interests of the amenity of future residents I have imposed a condition that ensures that parking and turning areas are used solely for these functions, one that will ensure that roads are developed to a given standard prior to occupation of individual houses, and one that will see the installation of badger proof fencing. To prevent undue nuisance to local residents I have imposed conditions relating to site working hours and the submission of a construction method statement.
55. I have also imposed conditions relating to the provision of suitable storm and foul drainage systems to prevent flood risk and a condition designed to ensure the protection of protected species.
56. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. I have therefore imposed a condition to this effect.
57. I have not however required the submission of further design details of the proposed windows and doors as requested by the Council, as this matter has been dealt with in my above reasoning. Neither have I imposed a condition relating to further details of meter boxes, vents and flues as requested by the Council. I consider such a condition would be unduly onerous.
58. The Council did however request a further condition relating to development in the form of alterations to walls and pathways in the immediate vicinity of the listed turnstile fronting High Street. Whilst I accept that the turnstile is listed, which provides a level of protection, I nonetheless consider that such a condition can be instrumental in ensuring an understanding of the relationship between the proposed development and this important feature. I have therefore imposed such a condition.

Overall conclusion

59. In arriving at my overall conclusion I acknowledge the strongly held views of members of the local community. However, in light of my above reasoning, and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Wilde

Inspector

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Development shall not begin until details of the estate roads, footways, tactile paving, cycleways, 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 parking and street furniture have been submitted and approved in writing by the local planning authority. The details shall be in the form of plans and sections and shall indicate as appropriate the design, layout, levels, gradients, materials and method of construction. Development shall be carried out in accordance with the approved details.
- 3) No dwelling shall be occupied until that part of the service road and footway which provides access to it from the existing public highway has been constructed to at least base course level.
- 4) No development shall take place until details of works at the site entrance to incorporate a traffic calming feature and provision for pedestrians and cyclists have been submitted to and approved in writing by the local planning authority. The works shall be completed in accordance with the approved details prior to the occupation of any part of the development.
- 5) The car parking spaces to be provided shall be kept available for the parking of motor vehicles at all times. The car parking spaces shall be used solely for the benefit of the occupants of the development hereby permitted and their visitors.
- 6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) Prior to the construction of the external surfaces of the dwellings hereby permitted details of all eaves/fascia boards, guttering, downpipes and other rainwater goods shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected and hard surfacing materials to be utilised. The details of hard surfacing materials shall include the use of porous materials to the parking and turning areas where appropriate. The boundary treatment and hard surfacing shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until full details of soft landscape works have been submitted to and approved in writing by the local planning authority. All planting, seeding, turfing or earth moulding works shall be

- carried out in accordance with the approved details and in accordance with a programme agreed with the local planning authority.
- 10) If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
 - 11) No development, demolition, site vegetation clearance, lighting of fires, ground works, storage of heavy materials or use of heavy machinery shall take place until a tree protection and arboricultural method statement (TPAMS) has been submitted to and approved in writing by the local planning authority. The TPAMS shall provide details of all existing trees and hedges to be retained on the site and shall conform to British Standard 5837 2012: *Trees in relation to design, demolition and construction*. The approved Statement shall be adhered to throughout the construction period. The TPAMS shall also include:
 - i) A plan showing the location of tree protection fencing,
 - ii) A method statement detailing special protection and engineering measures for required access, installation of built structures, below ground services, drainage and hard surfacing within the root protection areas of retained trees.
 - iii) A schedule of compliance monitoring for the duration of the construction phases of the development (inclusive of landscaping and the dismantling of the tree protection fencing) by a qualified and experienced arboricultural consultant.
 - 12) Demolition or construction works or deliveries to the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
 - 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) measures to control the emission of noise, dust and dirt during construction
 - v) routing of construction vehicles
 - vi) phasing of construction
 - 14) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with a programme agreed with the local planning authority.

- 15) None of the dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until a scheme for the provision of badger proof fencing has been submitted to and approved in writing by the local planning authority. The scheme shall include the details of materials, height above ground and depth below ground, and a plan of the location and extent of the fence. The fencing shall be installed in accordance with the approved details and in accordance with a programme agreed with the local planning authority, subject to any amendments required by Natural England in association with their licensing requirements.
- 17) The main access to the site shall not be created, including any removal of hedging, until a Dormouse mitigation plan and method statement has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details and timing of the mitigation plan and method statement, as modified to meet the requirements of any European Protected Species Mitigation Licence issued by Natural England.
- 18) No development shall take place until details of the alteration to walls and paths in the setting of the listed turnstile fronting High Street have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 19) The development hereby permitted shall be carried out in accordance with the approved plans listed in schedule 1 below.

Schedule 1

- 1 Location Plan LP.01
- 2 Site Layout SL.01 Rev M
- 3 Dwelling Materials Layout DML.01 Rev C
- 4 Boundary Materials Layout BML.01 Rev C
- 5 Street Elevations – Sheet 1 of 2 SE.01 Rev C
- 6 Street Elevations – Sheet 2 of 2 SE.02 Rev C
- 7 Slab Levels Layout SLL.01 Rev C
- 8 Adoptable Areas Plan AAP.01 Rev C
- 9 Public Open Space Layout POS.01 Rev B
- 10 Affordable Housing Layout AHL.01 Rev C
- 11 Site Levels Plan SLP.01 Rev C
- 12 House Type CAM (floor plans and elevations) HT.CAM.pe Rev D
- 13 House Type CAM – Variation A (floor plans and elevations) HT.CAM-A.pe Rev D
- 14 House type CAN (elevations) HT.CAN.e Rev C
- 15 House type CAN (floor plans) HT.CAN.p Rev C
- 16 House Type CON (floor plans and elevations) HT.CON.pe Rev B
- 17 House Type LET (floor plans and elevations) HT.LET.pe Rev C
- 18 House Type OXF (floor plans and elevations) HT.OXF.pe Rev C
- 19 House Type PEM (floor plans and elevations) HT.PEM.pe Rev C
- 20 House Type SHR (floor plans and elevations) HT.SHR.pe Rev C
- 21 House Type WAR (floor plans and elevations) HT.WAR.pe Rev D
- 22 House Type WAR – Variation A (floor plans and elevations) HT.WAR-A.pe Rev C
- 23 House Type WAR – Variation B (floor plans and elevations) HT.WAR-B.pe Rev D
- 24 Plots 12-15 (Type 2B4P/3B5P)- Elevations P.12-15.e Rev B
- 25 Plots 12-15 (Type 2B4P/3B5P) – Floor Plans P.12-15.p Rev B
- 26 Plots 37-41 (Types 2B4P/3B5P) – Elevations 1 P.37-41.el
- 27 Plots 37-41 (Types 2B4P/3B5P) – Elevations 2 P.37-41.e2

- 28 Plots 37-41 (Types 2B4P/3B5P) – Floor plans P.37-41.p
- 29 Plots 42-47 (Types 2B4P/3B5P) – Elevations 1 P.42-47.e1 Rev A
- 30 Plots 42-47 (Types 2B4P/3B5P) – Elevations 2 P.42-47.e2 Rev A
- 31 Plots 42-47 (Types 2B4P/3B5P) – Floor plans P.42-47.p Rev A
- 32 Plots 48-52 (Types 2B4P/3B5P/CON) – Elevations 1 P.48-52.e1 Rev A
- 33 Plots 48-52 (Types 2B4P/3B5P/CON) – Elevations 2 P.48-52.e2 Rev A
- 34 Plots 48-52 (Types 2B4P/3B5P/CON) – Floor plans P.48-52.p Rev A
- 35 Garages – sheet 1 – single garage GAR01.pe Rev D
- 36 Garages – sheet 2 – twin garage GAR02.pe Rev D

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs R Meager of Counsel
She called

Mr A Duckworth
Mr A Gunn
Mrs J Wilkins

FOR THE APPELLANT:

Mr S White of Counsel
He called

Mr G Williams
Mr C Pullan

INTERESTED PERSONS:

Mrs R Davis	Local resident
Mrs S Fox	Local resident
Mrs Atkinson	Local resident
Mrs M Hannam	Local resident
Mrs E Quantrell	Local resident
Mr B Sams	Local resident
Councillor B Halse	Local resident

DOCUMENTS

- 1 Letter dated 25 September 2012 from SSDC giving details of the date, time and venue for the Inquiry.
- 2 Opening statement by the appellant.
- 3 Opening statement by SSDC.
- 4 High Court Judgement *Wainhomes (South West) Holdings Ltd v Secretary of State for Communities and Local Government*.
- 5 Email exchange between Angela Watson of SSDC and John Galliford of SCC.
- 6 Statement from Mr B Sams.
- 7 Statement from Councillor B Halse.
- 8 Statement from Mrs E Quantrell.
- 9 Statement from Mrs R Davies.
- 10 Statement from Mrs S Fox.
- 11 Statement from Mrs M Hannam.
- 12 Document from SSDC to justify the required strategic contributions.
- 13 Capacity review of the Convent signals.
- 14 Letter dated 14 September 2012 from SSDC to the Planning Inspectorate.
- 15 Appeal decision APP/Y3940/A/11/2159115.
- 16 Letter dated 11 September from SSDC to Nathaniel Litchfield and Partners.
- 17 Council's suggested amendments to list of conditions.
- 18 Closing statement on behalf of SSDC.
- 19 Closing statement on behalf of the appellant.
- 20 Application for costs from the appellant.
- 21 Observations of SSDC on the Convent signals capacity review survey.

- 22 Observations of the appellant on the Convent signals capacity review survey.
- 23 Two copies of a signed and dated Unilateral Undertaking by the appellant.



Costs Decision

Inquiry held on 16, 17 and 18 October 2012

Site visit made on 18 October 2012

by John Wilde C.Eng M.I.C.E.

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

Decision date: 29 November 2012

Costs application in relation to Appeal Ref: APP/R3325/A/12/2176355 Land at Mitchell Gardens, Chard, Somerset, TA20 1QU

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Redrow Homes Southwest for a partial award of costs against South Somerset District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for sixty one residential dwellings, with associated vehicular and pedestrian access. Landscaping, site re-grading and related infrastructure and engineering works.
-

Decision

1. The application for an award of costs is refused.

The submissions for Redrow Homes Southwest

2. On the 12 September the Council accepted that they did not have a five year supply of housing as required by paragraph 47 of the National Planning Policy Framework (the Framework). This acceptance was in light of an Appeal decision relating to a site in Wincanton¹. In light of the contents of paragraph 14 of the Framework, the Council should therefore have informed the appellant that it no longer wished to contest this Appeal. The appellant would then have submitted a fresh application which should have received approval from the Council.
3. Whilst the Council wrote to the Planning Inspectorate on 14 September concerning the Wincanton Appeal they have not asserted that that the decision at Wincanton was reached unlawfully. The letter therefore has no status. Furthermore the appellant does not accept that the Council were timely in their acceptance of the Wincanton decision which was published on 29 August.
4. In not taking this course of action the Council have been unreasonable and caused the appellant unnecessary expense in having to continue to pursue the appeal. The appellant therefore seeks all costs associated with the Appeal from the 12 September.

The response by South Somerset District Council

5. The Council sent the letter to the appellant confirming their acceptance of the Wincanton decision in respect of the five year housing land supply on 11 September. The Council therefore acted quickly in this matter. Furthermore

¹ APP/R3325/A/12/2170082

the development of the emerging Core Strategy is now at a further stage than it was at the Wincanton Appeal and that Appeal did not raise the question of prematurity. The Council have not therefore acted unreasonably.

Reasons

6. I have considered this application for costs in the light of Circular 03/09. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. Paragraph B15 of the Annex to Circular 03/09 advises that a planning authority are at risk of an award of costs against them if they prevent, inhibit or delay development which should reasonably be permitted, having regard to the development plan, national policy statements and any other material considerations.
8. Paragraph 14 of the Framework concerns the presumption in favour of sustainable development. It makes clear that where the development plan is absent, silent or relevant policies are out of date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the paragraphs in the Framework taken as a whole.
9. Whilst the Wincanton decision has shown that the Council do not have a five year housing land supply and that therefore its housing land supply policies are out of date, the present appeal also concerned the future implementation of a regeneration strategy in Chard. This is included within the emerging proposed submission South Somerset Local Plan. The Council correctly considered such a strategy to be in line with paragraph 1 of the Framework, where it makes clear that the National Planning Policy Framework *provides a framework within which local people and their accountable Council's can produce their own distinctive local and neighbourhood plans, which reflect the needs and priorities of their communities.*
10. The Council also considered that the proposed development would be significantly and demonstrably prejudicial to the regeneration plan, which would outweigh any benefits that may arise from the proposed development. This is the specific caveat given in paragraph 14 of the Framework.
11. Whilst I do not have full knowledge of what was before the Wincanton Inspector, it seems to me that the circumstances of the cases must differ because of the existence of the Chard Regeneration Strategy. In the present case the absence of a five year housing land supply was not the only factor to be considered. I am also aware that the Council also had design issues with the proposed development which they related to other paragraphs within the Framework.
12. The appellant also has issues with the timescale within which the Council informed them of their acceptance of the lack of a five year housing land supply. This was about two weeks after the issue of the Wincanton Appeal decision. I am not persuaded however that this time period is so significant as to indicate unreasonable behaviour by the Council.

Conclusion

13. Whilst I have found against the Council in my appeal decision, I nonetheless consider that, taking into account the factors surrounding the appeal as a whole, they have not been unreasonable in continuing with the appeal after the acceptance of a lack of a five year housing supply. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/09, has not been demonstrated. An award of costs is not therefore justified.

John Wilde

Inspector