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## Appeal Decision

Site visit made on 7 September 2015

**by Thomas Shields MA DipURP MRTPI**

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

**Decision date: 01 October 2015**

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**Appeal Ref: APP/R3325/W/15/3018532**

**Land north of Stanchester Way, Curry Rivel, Somerset**

- 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 Mr Richard Mead (Summerfield Developments SW) against the decision of South Somerset District Council.
  - The application Ref 14/03154/FUL, dated 14 July 2014, was refused by notice dated 6 March 2015.
  - The development proposed is residential development of 30 dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of 30 dwellings at land north of Stanchester Way, Curry Rivel, Somerset in accordance with the terms of the application, Ref 14/03154/FUL, dated 14 July 2014, subject to the schedule of conditions attached to this decision.

### Application for Costs

2. An application for costs was made by Mr Richard Mead (Summerfield Developments SW) against South Somerset District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The planning application submitted to the Council referred to the site location as '*land at Maple Road*'. Subsequently it has been referred to by both parties as '*land north of Stanchester Way*'. It is clear from the submitted plans and from my visit to the appeal site that both references relate to the same site.
4. Following the Council's determination of the application the Council formally adopted the South Somerset Local Plan (2015) (LP). Consequently, the saved policies of the earlier South Somerset Local Plan (2006), referred to in the Council's refusal reasons, are no longer applicable to this appeal and I have not taken them into account. LP Policies SD1, SS2, EQ1 and EQ2, referred to in the refusal reasons as emerging policies, now form part of the statutory Development Plan. I have therefore given full weight to them in reaching my decision.
5. During the appeal process the Council confirmed in writing that it was no longer able to demonstrate a 5 year supply of deliverable housing sites. I return to this matter later.

## **Main Issues**

6. The main issues in this appeal are the effect of the proposed development on the character and appearance of the area, and whether there would be adequate provision for surface water drainage.

## **Reasons**

### *Character and appearance*

7. The appeal site is part of a larger area of arable farmland towards the north of Curry Rivel, a village identified in the adopted LP as a Rural Settlement.
8. Existing residential development surrounds the appeal site; to the north along Dyers Road; to the east beyond the adjacent open land along Stanchester Way; and to the south along Stanchester Way and Maple Road. A pedestrian footpath and drainage ditch runs along the western boundary of the site. An orchard lies further distant to the west beyond the remaining open land.
9. The proposed development would provide a mixture of 30 one, two and three bedroom dwellings with an area of public open space. The main access is proposed to be taken from Maple Road. The existing footpath along the western boundary would remain and pedestrian and cycle access would also link to Dyers Road.
10. I acknowledge that the current open agricultural appearance of the wider area of land in which the appeal site sits provides a visual link to the open countryside beyond and is of local value in this regard. However, from the various views I was able to take from the surrounding area I saw that the proposed development would be seen mainly in the context of the existing residential development along Dyers Road and the more built up residential area along Stanchester Way.
11. The Council refer to pressure for further development if the appeal were allowed. I accept that allowing the appeal could be a material consideration in respect of any future proposals for the remaining land to the east and west. However, I am unaware of any such existing proposals, and in any event each proposal must be considered on its own merit, as is the case here. Accordingly, I attach only limited weight to this matter.
12. With regard to siting, I conclude that some limited harm would result from the loss of the open land. However, the proposed development would for the most part be seen against existing residential development on three sides. The implementation of appropriate landscaping and boundary treatment, to include retention of existing features where possible, could be secured by a planning condition. It would soften and further integrate the site into its contextual surroundings. As such, the siting of the proposal would not result in any significant harm to the character and appearance of the area.
13. In respect of design, the appellant's undisputed evidence is that the Council has no adopted standards for private amenity space or housing densities. From the evidence before me, and also from what I was able to see at the time of my visit to the appeal site and the surrounding area, I consider that there is no strongly defined overall pattern in terms of housing density or private amenity space. Having regard to the proposed layout, particularly in respect of the quantum of housing relative to the site area, and the amenity space for

each type of dwelling proposed, I find that the scale and design of the proposed development would sit comfortably with the existing residential development in the area. Appropriate and sufficient amenity space would provide adequate living conditions for future occupiers. Consequently, the design of the proposed development would not result in any significant harm to the character and appearance of the area.

14. Given my reasons above, I conclude on the first main issue that in accordance with LP Policy EQ2 the proposed development would preserve the character and appearance of the district.

### *Drainage*

15. There is no dispute that the appeal site lies within Flood Zone 1 on the Environment Agency's (EA) flood risk maps, categorised as land having the lowest risk of flooding.
16. The application for the proposed development was supported by a Flood Risk Assessment<sup>1</sup> (FRA) including a strategy for a Sustainable Drainage System, later supplemented with further detailed information.
17. Written and photographic evidence of past flooding in Curry Rivel has been submitted from local residents, highlighting their concerns that the proposed development of the site would exacerbate flooding problems in the wider area. Reference is made to flows from the north of the site and also downstream from the proposal.
18. With regard to this matter, part of the appellant's evidence is that the fluvial channel north of Dyers Road (outside of the appeal site) is shallow and enters a culvert beneath Dyers Road which is either exceeded or prone to blockages. This results in excess water exiting the channel and flowing across the highway surface affecting properties on Dyers Road. Also, flows from this source that enter the appeal site drain to the drainage ditch along the western boundary of the appeal site. With regard to past events around Parsonage Place, the EA's Risk of Flooding from Surface Water Map identifies an overland flow route adjacent to Parsonage Place which affects the A378 and nearby properties. Also, it is clear from the photographic evidence that the culvert under the A378 exceeds capacity causing water to flow over the top of the channel banks adjacent to parsonage place. None of this evidence is disputed by the Council.
19. While I understand the concerns of local residents, the duty on the appellant is not to solve the existing problems, but rather it is to demonstrate that the proposed development would not increase the risk of flooding elsewhere.
20. The drainage strategy proposes to utilise the existing drainage channel along the western boundary of the appeal site. Prior to entering the ditch, water from the north of the site would be collected by pipework and directed to oversized pipes which would attenuate the flow into the attenuation pond in the south-west corner of the site. Water flowing into the ditch from the southern half of the site would be managed by draining to an underground geo-cellular storage system before flowing into the attenuation pond. The stored surface water in the pond would flow into the drainage ditch utilising a hydrobrake at a maximum rate of 3.7l/sec during a 1 in 100 year flood event.

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<sup>1</sup> Flood Risk Assessment, RMA Environmental, 30 October 2014

21. Prior to the Council determining the application the FRA was supplemented with further detailed information, including the depth and storage volume of the proposed attenuation pond, the capacity of the proposed underground storage areas, and the effect of the proposal on flooding and drainage off site. The information was referred to in the officer report to the Area North Committee<sup>2</sup>. It concluded that the proposed drainage strategy would be able to adequately address surface water flows and attenuate surface water drainage such that it would achieve a betterment over the existing green field run-off rate.
22. While I note the concerns of the Council set out in its statement of case, together with the concerns of local people set out in the representations I have received, I can find no inaccuracies or fault in the methodology or conclusions of the FRA and the proposed drainage strategy. Moreover, there is no objection to the proposal on these grounds from the Council's drainage engineer, or indeed from the EA who are the relevant experts and statutory consulting body in respect of such matters.
23. On the balance of the evidence before me I conclude that the proposed development, subject to the implementation of appropriate drainage, would not result in any significant increase in flood risk. Rather, it would lead to a decrease in the likelihood of off-site flooding in accordance with paragraph 103 of the National Planning Policy Framework (2012) (the Framework) which requires that local planning authorities to ensure that flood risk is not increased elsewhere. It would also accord with LP Policy EQ1 which, amongst other matters, requires development proposals to reduce and manage the impact of flood risk by incorporating Sustainable Drainage Systems.

#### *Other Matters*

24. Other concerns raised by local residents relate to the following matters: traffic generation, parking provision and highway safety, safety of children using the play area and in respect of the attenuation pond, ecological impacts, foul sewerage capacity, the adequacy of local infrastructure, services and facilities, and noise and disturbance during construction. Some of these matters can be controlled by planning conditions. Moreover, they were identified and considered in detail by the Council who did not consider they amounted to reasons to justify withholding planning permission. Subject to the imposition of appropriate planning conditions, I see no compelling reason to take a different view.

#### *Unilateral undertaking*

25. Regulation 122 of the Community Infrastructure Regulations (2010) (CIL) and paragraph 204 of the Framework require that planning obligations should only be sought where they meet the following tests: that they are necessary to make the development acceptable in planning terms; they are directly related to the development; and they are fairly and reasonably related in scale and kind to the development.
26. LP Policy SS6 sets out the Council's overarching objective of delivering infrastructure (or requiring contributions towards their provision) while LP Policies HW1, HW2 and HW3 support the requirements for the various types of infrastructure.

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<sup>2</sup> Update Report to Committee, 25 February 2015

27. A planning obligation in the form of a unilateral undertaking (UU) has been submitted by the appellant. It would ensure that 10 of the proposed 30 dwellings would be provided as affordable housing, in accordance with national and local planning policy requirements to address local housing need. It would also ensure the provision and implementation of a management and maintenance scheme for the flood attenuation pond. In accordance with LP Policy HW1 it would also provide for an extension to the existing adjacent children's play area and its transfer to the Council, together with contributions of £24,193 and £13,974 towards the provision of play equipment and long term maintenance.
28. Given the identified need for affordable housing provision, the need for long term management and maintenance of the flood attenuation pond, and the likely increase in child occupiers and demand for locally equipped areas of play, I consider that the above elements of the UU are evidently justified and meet the relevant legal and policy tests I have previously set out. I have therefore taken these elements of the UU into account in reaching my decision.
29. Other provisions in the UU include the following financial contributions: £4,750 and £1,756 towards enhancing and maintenance of youth facilities at Westfield Recreation ground; £23,727 and £1,909 towards enhancing changing room facilities; £45,419 towards either enhancing the existing community hall or providing a new community hall; and £5,392 towards the development of an indoor swimming pool in the Langport/Huish Episcopi area.
30. With regard to these facilities I note the supporting text<sup>3</sup> to Policy SS6 states that the Council will use its Infrastructure Delivery Plan (IDP) and regular monitoring of infrastructure capacity to understand the required infrastructure. However, the IDP and monitoring information does not form part of the Council's evidence. A consultation response from the Council's Leisure Policy Co-ordinator has been provided but provides only limited information in terms of apparent deficiencies in provision. In the absence of detailed evidence, including in the form of planned and costed proposals for the facilities, and how the level of contributions sought were calculated, I am unable to conclude that these contributions directly relate to the development or that they fairly and reasonably relate to the development in scale and kind. Hence I am unable to conclude that they are necessary to make the development acceptable in planning terms.
31. To conclude, the contributions detailed at paragraph 29 above do not meet the relevant legal and policy tests set out at CIL Regulation 122 and paragraph 204 of the Framework. I have not therefore given these elements of the UU any weight in reaching my decision.

### *Planning balance*

32. The Council is unable to demonstrate a 5 year supply of deliverable housing sites. In such circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered as being up-to-date, and the presumption in favour of sustainable development at paragraph 14 of the Framework is engaged.

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<sup>3</sup> LP Paragraphs 5.69 – 5.78

33. For decision-taking, this means approving development proposals that accord with the development plan without delay and, where the development plan is absent, silent or relevant policies are out of date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. LP Policy SD1 closely reflects this approach to decision making.
34. The Framework (paragraphs 7 and 8) sets out 3 inter-linked dimensions and roles for sustainable development; social, economic and environmental, which should not be undertaken in isolation because they are mutually dependent.
35. In social terms I note the strength of local opposition to the proposal, together with the Council's indicated conflict in this regard with LP Policy SS2. However, I give greater weight to the Framework and LP Policy SD1 as set out above. The proposal would provide 30 new dwellings, 10 of which would be available as affordable housing, at a time when there is currently an under-supply of market and affordable housing in the District. I consider this to be a substantial social benefit to which I attach significant weight. It would also provide an enhanced play area for children which would be used by existing and future occupiers.
36. In economic terms, the proposal would provide some construction jobs, albeit temporarily, and would result in some growth in the economically active population with increased household expenditure, some of which is likely to be spent at local shops and services.
37. In environmental terms the proposed development would result in some loss of open agricultural land. Given this change in the appearance of the site there would be a limited degree of harm. However, the proposed development would be largely contained within the context of the existing built up area and would thereby be appropriate in terms of siting, design and provision of private amenity space, as I have previously identified. Thus it would not appear as a significantly harmful intrusion into the open rural edge of the village and would respect the character and appearance of the settlement and its setting. The appeal site would also be reasonably well located in terms of its accessibility to village facilities and access to public transport to reach other settlements.
38. Taking account of all the above factors I conclude that the benefits of the proposal would not be significantly and demonstrably outweighed by adverse impacts when assessed against the policies in the Framework taken as a whole, and the proposal would be sustainable development in social, economic and environmental terms overall.

### **Conditions**

39. A number of conditions have been suggested by the Council which I have considered against the advice in the national Planning Practice Guidance and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. Where necessary and in the interests of precision, I have amended them to bring them in line with the guidance.
40. In addition to the statutory 3 year limitation for implementation it is necessary, for the avoidance of doubt and in the interests of proper planning, to define the plans with which the scheme should accord. Conditions are required to protect

the character and appearance of the area. These include the development's external materials, hard and soft landscaping, and boundary treatments. A Construction Management Plan is necessary in the interest of amenity due to the proximity of existing dwellings. In the interest of highway safety and amenity conditions are necessary to restrict the area allocated for parking for that purpose, and to secure the implementation of approved details for the layout and construction of estate roads, junctions, driveway gradients, footpaths, and related areas. In the interest of securing a sustainable form of development conditions are necessary to secure archaeological investigation work, measures for enhancement of biodiversity and protection of slow worms, and the approval and implementation of a detailed surface water drainage scheme including its long term future maintenance.

**Conclusion**

41. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*Thomas Shields*

INSPECTOR

(Attached – Conditions Schedule)

### **CONDITIONS SCHEDULE**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following plans: 0492-101-A, 0492-102-B, 0492-103-A, 0492-104-B, 0492-105-A, 0492-106-A, 0492-107-A, 0492-108-A, 0492-109-A, 0492-110-A, 0492-111-A, 0492-200, 492-201, 0492-202, 0492-203, 0492-204, 0492-205, 0492-206, 0492-207, 0492-208, 0492-209, 0492-210, 0492-211, 0492-212, 0492-213, 584-04E.
- 3) Prior to the commencement of development (including any ground works or site clearance) a mitigation plan or method statement detailing measures to avoid harm to slow worms shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and timing of the mitigation plan/method statement.
- 4) Prior to the commencement of development details of measures for the enhancement of biodiversity shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved biodiversity enhancement measures.
- 5) The submitted landscape plan ref. 584-04E shall be implemented in accordance with a phasing plan which shall have been submitted to and approved in writing by the local planning authority prior to commencement of development on site. For a period of 5 years after the completion of the planting scheme any trees or shrubs that die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The area allocated for parking on the submitted plan, Drawing No. 0492-102, shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 7) The proposed estate roads, footways, footpaths, tactile paving, cycle ways, 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 shall be constructed and laid out in accordance with details and drawings which shall have first been submitted to and approved in writing by the local planning authority.
- 8) 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 existing highway.
- 9) The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10 and shall be permanently retained at that gradient thereafter at all times.
- 10) Prior to the commencement of development a detailed surface water drainage scheme for the site, based on the hydrological and hydrogeological context of the development, shall be submitted to and approved in writing by the local



planning authority. The development shall be carried out in accordance with the approved scheme.

- 11) No dwelling approved by this permission shall be occupied until a scheme for the future responsibility and maintenance of the surface water drainage system has been submitted to and approved in writing by the local planning authority. The approved drainage works shall be completed and maintained in accordance with the approved scheme.
- 12) Prior to commencement of development full details of all external facing and roofing materials, including hard-standings and boundary treatments, and details of the design, recessing, and finish for all windows and doors shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13) Prior to the commencement of development a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include hours of operation and deliveries, vehicular routes to and from site, areas for parking of contractors and visitors vehicles, and specific measures to be adopted to minimise impacts on the amenity of local residents. The development shall be carried out in accordance with the approved CMP.
- 14) No development hereby approved shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work that involves evaluation (through geophysical survey, if appropriate and trial trenching) followed by appropriate mitigation (involving excavation in appropriate areas). This work shall be in accordance with a written scheme of investigation which shall have first been submitted to and approved in writing by the local planning authority.
- 15) Prior to commencement of development a scheme for the provision and management of the communal areas shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 16) Prior to commencement of development a revised Travel Plan Statement (TPS) shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied prior to implementation of those parts identified in the approved TPS as capable of being implemented prior to occupation. Those parts of the approved TPS that are identified for implementation after occupation shall be implemented in accordance with the timetable contained therein.

**END OF SCHEDULE**