
Appeal Decision

Site visit made on 13 October 2015

by Jennifer Tempest BA(Hons) MA PGDip PGCert Cert HE MRTPI IHBC

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

Decision date: 23 February 2016

Appeal Ref: APP/R3325/W/15/3131031

Land west of Triways, Foldhill Lane, Martock, Somerset TA12 6PQ

- 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 Martock Farms Ltd against the decision of South Somerset District Council.
 - The application Ref 14/04123/OUT, dated 9 September 2014, was refused by notice dated 15 April 2015.
 - The development proposed is described as "residential development of up to 35 dwellings (resubmission of 14/01330/OUT)".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Martock Farms Ltd against South Somerset District Council. This application is the subject of a separate Decision.

Background and Preliminary Matters

3. The application seeks outline planning permission for up to 35 dwellings with all matters reserved for later approval. I have determined the appeal on this basis. The application drawing is 14022 – 1 Rev B. Drawing 14022 – 2 Rev G shows a layout and is entitled "sketch illustrative site plan"; the evidence confirms this drawing to be for illustrative purposes only.
 4. After the appeal was lodged the Council confirmed, in a letter dated 29 September 2015, that it was unable to demonstrate a 5 year supply of housing land. A copy of a Council report setting out the position as at September 2015 accompanied the letter and the appellant was provided with the opportunity of commenting on this change of circumstance.
 5. The South Somerset Local Plan 2006 – 2028 (Local Plan) was adopted in March 2015. Policy SS5 of the Local Plan addresses the delivery of new housing growth and sets out that prior to the adoption of the Site Allocations DPD a permissive approach will be taken when considering housing proposals in Yeovil and the Market Towns. In terms of the settlement hierarchy, Martock is classified as a rural centre. The Local Plan advises that the scale of growth and the wider policy framework, together with maintaining the settlement hierarchy and sustainable levels of growth would apply when considering housing proposals adjacent to the development area at the rural centres.
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Main Issues

6. These are (i) the effect of the proposal on the character and appearance of the area and (ii) whether the proposal would affect flooding elsewhere.

Reasons

Character and appearance

7. The appeal site is a triangular area of land on the east side of Martock. The land rises gently from south to north. The site is bounded on its north-west boundary by Foldhill Lane, and on the south-west and east boundaries by public footpaths. Beyond the south-west boundary of the site and alongside the public footpath is the route of a dismantled railway. The housing of Bearley Road and Eastfield lies on the south side of the dismantled railway. The site boundaries are defined by mature hedgerows and some trees, although the southernmost corner of the site includes a roughly triangular area of more dense vegetation.
8. A care home has been recently built on the opposite side of Foldhill Lane to the appeal site. The Council describe this as being single storey where the ground level rises and having been cut into the site to minimise its impact on the landscape. The site plan which forms part of the appeal proposal is annotated (from roughly south to north) to show the extent of general residential development, an area of 1.5 storey houses and the northern extent of built development proposed which is on approximately the same contour as the furthest extent of the care home buildings. The annotation also indicates that roads and parking would extend northwards beyond the housing and that the highest part of the site would be a landscape and amenity area. The illustrative layout plan includes 35 dwellings in the form of short terraces, and linked dwellings together with roads, garages and parking areas.
9. The appellant contends that concerns expressed by the Council's landscape architect in relation to a previous proposal on the site are now addressed by the reduction of the numbers of dwellings proposed and the principles of the layout now put forward.
10. On the east side of Foldhill Lane the route of the dismantled railway defines a clear boundary marking the edge between existing development and the open countryside to the north east. The evident change in character from the area of existing housing to rural land is readily experienced by walking along the public footpath which runs alongside the south west boundary of the appeal site. The public footpath which runs along the eastern boundary of the site reinforces the sense of the appeal site being in the open countryside as there is undeveloped land on both sides of the path. The proposed development would be clearly evident from both public footpaths. The submitted layout, whilst illustrative, indicates new hedge and tree planting on the housing side of the public footpath on the eastern boundary, but otherwise suggests very limited opportunities for landscaping within the area proposed for housing, particularly towards the south western end of the site.
11. The appeal site is part of the wider countryside which currently forms the setting of Martock. The area to the north-east of Martock is shown in the Council's landscape study¹ as an area of high landscape sensitivity with a low

¹ Peripheral landscape study – Martock South Somerset District Council June 2008

capacity to accommodate built development. From my site visit, it is clear that the development would be evident from the public footpaths bounding two sides of the site as well as from parts of Foldhill Lane. The illustrative layout indicates removal of the triangular area of vegetation in the southern corner of the site which would further open the site to local views from the south. I acknowledge the existing landscape boundaries to the site offer a degree of containment and that the proposed amenity area offers scope to mitigate harm to the rural landscape. However, there would be some landscape harm from the incursion into open countryside and I conclude that the proposal would neither conserve nor enhance the landscape character of the area, which is a requirement of Local Plan policy EQ2.

Flooding

12. Section 10 of the National Planning Policy Framework (Framework) is concerned with meeting the challenge of climate change and flooding. Paragraph 103 of the Framework requires that in determining applications, it should be ensured that flood risk is not increased elsewhere and that priority should be given to the use of sustainable drainage systems (SuDS). Planning Practice Guidance (PPG) states that opportunities should be taken to reduce the overall level of flood risk by, for example, the layout and form of development, including green infrastructure through safeguarding land for flood risk management. The PPG emphasises that SuDS are important and provide opportunities to reduce the causes and impacts of flooding as well as combining water management and green space with benefits for amenity, recreation and wildlife.
13. The Town and Country Planning (Development Management Procedure) (England) Order 2015 states that in cases of major development sustainable drainage systems should be provided unless demonstrated to be inappropriate. The PPG sets out that the aim, as far as reasonably practicable, should be to discharge surface water run off according to a hierarchy² of measures. This hierarchy starts with infiltration or discharge into the ground; followed by a surface water body; a surface water sewer, highway drain or other drainage system, and finally a combined sewer. The PPG also states that where a development includes a SuDS, the proposed minimum standards of operation should be appropriate and that there should be clear arrangements in place for ongoing maintenance³. Advice on what is reasonably practicable in terms of SuDS is to be sought from the Lead Local Flood Authority (LLFA) including on what sort of sustainable drainage system they would consider to be reasonably practicable. Reference is to be made to technical standards⁴ and take into account design and construction costs.
14. Although the appeal site is in Flood Zone 1, the size of the proposal necessitates a site specific Flood Risk Assessment (FRA) and this formed part of the application submission. The Environment Agency raises no objections subject to conditions to agree the technical details of the drainage scheme and the future management and maintenance of the drainage arrangements. The Council, however, points to flooding problems in the surrounding area and in particular to surface water run-off from the Foldhill Lane direction and

² Paragraph 21. ID 7-080-20150323

³ ID 7-081-20150323

⁴ *Sustainable Drainage Systems; Non-statutory technical standards for sustainable drainage systems*. Department for Environment, Food and Rural Affairs March 2015

- inadequate drainage in East Street. These flooding issues are highlighted in evidence from local residents.
15. During the course of the application being considered, there was extensive correspondence including that between the appellant and their drainage consultants, planning officers and the Council's drainage engineers. As a consequence additional and revised information was submitted including calculations on the potential for surface water storage. These calculations are based on the illustrative layout drawing. The more recent information includes a plan based on a topographical survey in order to show the existing directions of surface water flows on the site. Surface water from the proposed development is to be directed to the southern boundary of the site and thereafter towards the highway drainage system for Foldhill Lane, via a sump which is outside the appeal site. Attenuation to restrict surface water flows to greenfield run-off rates is shown in the appellant's evidence as being achieved by storage under areas of parking and access to parking. A plan prepared by the appellant's consulting engineers and overlaid on the illustrative layout plan identifies permeable surfaces, bio retention and a linear swale along the southern boundary of the site.
 16. The County Council, in their role as LLFA commented on the proposals at the appeal stage. They advise that at the point of granting planning permission, it is necessary to be satisfied that the site can be drained in accordance with the Framework. This includes complying with the technical standards for SuDS or demonstrating why they are inappropriate. The LLFA observe that the drainage solution for the site could affect the layout and the number of dwellings, pointing out that restricting development to the lower part of the site for landscape reasons is the opposite to what is best for the drainage and compromises the drainage features which can be used. They point out that without open space in the layout it is unclear that enough storage is possible. Routing of overland flows from exceedance events has not been carried out and will be left to detailed design stage. Accordingly, housing numbers may need to be reduced and open space may need to be introduced into the lower parts of the site.
 17. The Somerset Drainage Boards Consortium (SDBC) advise that whilst the site is outside the Parrett Internal Drainage Board area, any surface water will discharge into the Board's area and the SDBC supports the Council's decision to refuse. They point to the site lying on a gentle hill slope which drains into brook or stream 500 m away. In their letter of 3 September 2015 they indicate that land to the north-east of Martock and the course of the old railway line, discharges its surface water through the residential area to its south west. There are virtually no watercourses to allow this to occur and therefore all water and particularly floodwater must flow overland along roads or through very modest and old drainage systems to reach the arterial drainage or the Millstream or Hurstbrook. In taking this route through the residential area a number of properties will flood in East Street as evidenced by flooding to houses in recent years.
 18. The SDBC refer to the proposal's reliance on the existing highway drainage for discharge of surface water which, in recent flood events, has been shown to be inadequate and, although the highway authority may have undertaken localised works, the system is not designed for general surface water drainage but for highway drainage. The SDBC requires that no further areas or increased

volume should be directed into the highway drainage and that a more comprehensive drainage plan should be compiled and implemented for the land to the north east of the old railway line before any further development takes place.

19. The appellant's plan showing existing flows, based on the topographical survey, does not involve surface water from the site using the route of the dismantled railway but a ditch at the southern boundary of the site which already discharges to the highway drainage network. The outcome of the additional information provided by the appellant to the Council was that the Council's drainage engineers concluded there was a potential drainage solution for the site, based on there being no increase in the rate of discharge to the highway drain above that of existing greenfield run-off rates.
20. Correspondence also indicates that maintenance of the on-site drainage system would be the responsibility of the developer and would be described at detailed design stage. The appellant has not carried out infiltration tests and proposes to do so at detailed design stage. However, it is indicated that geo-cellular storage is likely to remain the major part of the drainage strategy because the public open space is to be provided on the higher part of the site for landscape reasons.
21. The ditch on the south-western boundary is stated to be in the riparian ownership of the landowner and there is therefore a right to discharge into it. This ditch that would accept the proposed surface water runoff connects to a brick culvert which passes under the public footpath and then connects to a piped system that flows under Foldhill Lane. The appellant carried out a CCTV survey of the culvert to confirm its condition, but responsibility for maintaining the culvert free from obstruction would be outside the control of the appellant and rests with the highway authority. Although the appellant's engineering consultants appear to state in their letter of 30 January 2015 that there is no reason that ongoing maintenance could not be secured by agreement, no written confirmation of the highway authority's agreement to the proposals in terms of surface water drainage has been provided. I note that the Council's drainage engineer points to the need for the County Council to confirm rights for the development to discharge to the culvert.
22. I have been provided with a copy of a recent appeal decision⁵ relating to a site elsewhere in the District where surface water drainage was also a determining issue. The appellant draws attention to the Inspector's comments at paragraph 19 of the decision which are that the duty on the appellant is not to solve existing problems but to demonstrate that the proposed development would not increase the risk of flooding elsewhere. Whilst I have the Inspector's decision, I do not have the details of the proposal and the drainage strategy which were before him. However, unlike the proposal which is before me, the Inspector was considering a proposal for full planning permission. The decision letter confirms detailed information was provided on the depth and storage volume of the proposed attenuation pond and the capacity of the proposed underground storage areas. I also note that a Unilateral Undertaking provided for a management and maintenance scheme for the flood attenuation pond. The Inspector in this case was able to conclude that the proposal would lead to a decrease in the likelihood of off-site flooding and so compliance with

⁵ APP/R3325/W/15/3108532

- paragraph 103 of the Framework. However, there are significant differences between the circumstances of the cited appeal and the proposals which are before me and therefore this appeal has not had any significant bearing on my decision.
23. The Council's engineer in his response of 10 March 2015 acknowledges that, in leaving matters to be resolved at detailed design stage, it is important to accept that this may affect the layout and potentially the number of units than can be accommodated on the site. The Council's evidence indicates that, notwithstanding the advice to committee that the proposals be permitted, the failure to submit full drainage details as part of a reserved matters submission could lead to a recommendation of refusal on drainage grounds or could lead to a need to redesign the site in a matter that could have other detrimental knock-on impacts in relation to visual impact or the number of dwellings.
24. Whilst there may be a solution to the eventual surface water drainage of the proposed development, the submitted information is described by the Council's engineer as a conceptual drainage strategy. This strategy has been calculated on an illustrative layout which could be subject to change but nonetheless seeks to demonstrate that 35 dwellings could be built on the lower part of the site. Notwithstanding the evidence provided by the appellant's engineers that the volume of discharge to the highway drainage system would not increase, given the evident issues with surface water in East Street I consider it is necessary that the drainage strategy, including the maintenance of the culvert and discharge to the highway drainage system, are resolved prior to any grant of planning permission.
25. Taking all of the above into account, the evidence does not demonstrate that the proposal would satisfy Local Plan Policy EQ1 which addresses climate change and looks to manage and reduce the impact of flood risk, including through the application of sustainable urban drainage systems, and through appropriate layout and design. I am not satisfied by the evidence that the proposal complies with Section 10 of the Framework. The potential measures for achieving a SuDS whilst taking account of the hierarchy set out in the PPG are constrained not only by considerations of landscape impact but also by the application seeking a specific number of dwellings. Accordingly, I consider that the proposal does not comply with the PPG in this respect.
26. I have considered whether or not this matter could have been addressed by a condition, including one which precluded any development taking place prior to development being commenced. However, as permission is sought for up to 35 dwellings but all matters including layout are reserved for later approval, I consider that a condition would be inappropriate in this instance.

Planning Obligations

27. I have been provided with an agreement between the South Somerset District Council, Somerset County Council and the appellant under S106 of the Act. This agreement makes provision for affordable housing; financial contributions towards sports, arts and leisure facilities and a contribution towards education. The District Council have provided evidence which seeks to demonstrate that the contributions sought would meet the CIL Regulations. Given my conclusions on the main issues identified above, it is not necessary for me to reach a view on whether the obligation meets the relevant requirements.

Other matters

28. The Council's first reason for refusal refers to the loss of agricultural land which they state is Grade 3a. The appellant confirms that the land is Grade 3 but has not been able to ascertain whether it is Grade 3a or 3b. The Council's evidence refers to the loss of the agricultural land being unwarranted. This matter has not been a determining factor in my decision.
29. Other concerns raised by local residents relate to traffic generation and highway safety, ecological impacts, the adequacy of local infrastructure services and facilities and construction traffic. Some of these matters could have been controlled by planning conditions and the S106 Agreement had the development been acceptable in other respects. However, none of the matters raised lead me to a different conclusion with regard to the main issues.

Assessment

30. Paragraphs 6 – 8 of the Framework make clear that the purpose of the planning system is to achieve sustainable development, and that sustainable development has three dimensions such that the planning system must perform three mutually dependent roles, which are economic, social and environmental. These roles are to be sought jointly and simultaneously.
31. The proposal would provide 35 dwellings of which some 35% would be affordable housing. There is an acknowledged shortage of both market and affordable dwellings. The development would provide employment through the construction work required. The proposal would thus be of both economic and social benefit and I accord these benefits considerable weight.
32. The Council cannot demonstrate an adequate supply of housing land, consequently, policies related to the supply of housing in the Local Plan must be considered as out of date. This change in circumstance since the Council determined the application overcomes that part of the Council's first reason for refusal which refers to there being no special justification for the proposal.
33. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development, that proposals which accord with the development plan should be approved and where development plans are out of date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. Paragraph 49 addresses this specifically in respect of housing, which is to be considered in the context of the presumption in favour of sustainable development.
34. The Council acknowledge that the site is located close to the facilities of the Martock. However, location is only one factor to be considered in respect of sustainable development. The proposed development would extend into the countryside and would cause some harm to the open landscape which forms the setting of the town to the north east. The illustrative layout indicates that opportunities for landscaping to integrate the development into its surroundings would be largely restricted to the immediate site boundaries and the triangular amenity space indicated on the highest part of the site.
35. Given the requirements of the Framework and PPG which I have outlined above, I accord significant weight to the need to ensure that development does not increase the risk of flooding. The inclusion within the proposal of a

maximum number of dwellings in the absence of an agreed layout and drainage strategy reduces the flexibility of dealing satisfactorily with those matters which remain unresolved, including a full assessment of the suitability of sustainable drainage measures in accordance with relevant guidance. Accordingly, I am not persuaded that leaving the matter of the drainage strategy to follow a grant of planning permission for up to 35 dwellings on this site is acceptable. There are matters which are unresolved with regard to the surface water strategy for the site and I attach considerable weight to the views of the LLFA that the ability to provide SuDS measures is constrained by landscape considerations and the number of dwellings proposed.

36. Accordingly, I am not satisfied by the evidence that the proposal would meet the environmental criteria necessary for the proposal to be considered as sustainable development. Consequently, the presumption in favour of development set out in the Framework does not apply. I therefore find that for similar reasons the proposal would conflict with Policy SD1 of the Local Plan which promotes sustainable development that improves the economic, social and environmental conditions within the District.

Conclusion

37. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

Jennifer Tempest

INSPECTOR