



Appeal Decision

Site visit made on 22 September 2020

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2020

Appeal Ref: APP/X1165/W/20/3250977

Land to the north of Totnes Road, Collaton St Mary, TQ4 7PW

- 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 Taylor Wimpey UK Ltd against the decision of Torbay Council.
 - The application No:P/2019/0604, dated 30 May 2019, was refused by notice dated 21 October 2019.
 - The development proposed is up to 73 dwellings (including market and affordable housing) with all matters reserved except access arrangements to be provided directly onto Totnes Road via an access junction.
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Decision

1. The appeal is allowed and outline planning permission granted for up to 73 dwellings (including market and affordable housing) with all matters reserved except access arrangements to be provided directly onto Totnes Road via an access junction at Land to the north of Totnes Road, Collaton St Mary, TQ4 7PW in accordance with the terms of the application No:P/2019/0604, dated 30 May 2019, subject to the conditions set out in the Schedule of Conditions attached to this Appeal Decision.

Application for costs

2. An application for costs was made by Taylor Wimpey UK Ltd against Torbay Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal application is in outline but with access to be determined as part of the application. Access details are shown on the Proposed Access Layout Plan 16867 GA-04 rev J. I have had regard to the Indicative Layout Plan and Indicative Landscape Strategy as illustrative material not forming part of the application.
4. The Council refused the application against officer recommendation for approval because; "The site is in an area that has been subject to flooding from foul and surface water sewers and the information submitted in support of the application fails to provide sufficient detail to demonstrate that the development will not contribute to further flooding, contrary to Policy PNP1 (iv) of The Paignton Neighbourhood Plan, which seeks detail on foul and surface water drainage and other key infrastructure being required when major development (as defined in the Town and Country Planning (Development

Management Procedure) (England) Order 2015) applications are first submitted, and not being dealt with subsequently by conditions.”

5. The Council subsequently resolved on 10 August 2020 to approve a ‘duplicate’ application (P/2020/0405) subject to the completion of a section 106 legal agreement. I have not been advised that a decision notice has been issued for application P/2020/0405. Nevertheless, the Council confirmed its position by email dated 18 August 2020, which states; “As members have approved P/2020/0405, what as stated is principally an identical scheme to that at appeal, the Council no longer objects to the scheme that is subject of the appeal, so far that it has “granted” permission subject to a s106 being signed. The Authority will hence not offer a statement of case at this time, in the circumstances.”
6. A unilateral planning obligation, dated 18 September 2020, is conditional on the grant of planning permission for the appeal scheme and would provide for the following:
 - 30% of the dwellings secured as affordable housing
 - A financial contribution towards education
 - A financial contribution towards infrastructure improvement works on the A385 Totnes Road as a result of the development
 - A financial contribution towards sustainable transport
 - A contribution towards a Traffic Regulation Order to relocate the 30/40 mph speed limit boundary as a result of the development
 - A contribution towards a flood alleviation scheme immediately downstream of the development on the Yalberton watercourse
 - A contribution for improvement of facilities at Paignton Library and Information Centre and/or Churston Library
 - A contribution towards provision of waste and recycling facilities
 - Provision of open space and a Sustainable Urban Drainage System.
7. The Council confirmed by email dated 28 October 2020 that it is; “satisfied that the unilateral undertaking submitted on behalf of the appellant accords with the provisions of s.106(9) of the TCPA 1990 and that the obligations contained therein satisfy the requirements of the Council’s adopted ‘Planning Contributions and Affordable Housing’ SPD”.
8. The Council has not submitted a Statement of Case, does not object to a comparable scheme subject to a section 106 agreement being signed, and raises no issues concerning the signed unilateral obligation submitted for the appeal scheme. It is therefore reasonable to find that the Council sees no impediment to the grant of outline planning permission for the proposed development, subject to the suggested planning conditions. However, third parties raise concerns about several matters which, in the absence of objection from the Council, are the remaining matters in dispute in this appeal.

Main Issues

9. The main issues in this appeal concern the effects of the proposed development on the character and appearance of the area, drainage, highway safety and infrastructure provision. I have considered these matters along with relevant statutory requirements in this case.

Reasons

Character and appearance

10. The appeal site is an open field in an edge-of-settlement context. Residential development of up to 73 dwellings on the site, with a new access onto Totnes Road, would result in some harm to the character and appearance of the area. The adverse landscape and visual impact could be minimised with appropriate approval of details for appearance, landscaping, layout, and scale in accordance with Policy DE1, about design, and Policy DE3, with respect to amenity, of the Torbay Local Plan 2012-30, which was adopted in 2015 (TLP). The indicative layout indicates that there is a reasonable prospect of designing and implementing a scheme for 73 dwellings that would safeguard the amenity of nearby occupiers, including the school. Nevertheless, I consider that the proposed development would have an adverse effect on the character and appearance of the area of slight significance.

Drainage

11. The site lies within Flood Zone 1 where there is a low risk of flooding. However, the valley floor to the north/east of the site, close to Blagdon Road, is a linear area with an identified risk of flooding. The submitted flood risk assessment, illustrating a drainage solution that utilises attenuation tanks and balancing ponds, demonstrates that attenuation would discharge to a local watercourse at a rate equivalent to greenfield run-off. The scheme would make a financial contribution towards strategic flood alleviation works for the Yalberton watercourse. Foul sewerage is proposed to be connected to the public sewer system that runs along Totnes Road. South West Water has confirmed that it can provide foul sewerage services for the site. The evidence indicates that drainage is a matter that could, in the circumstances that apply here, be addressed by the imposition of appropriate planning conditions and provision of necessary obligations. The scheme would comply with TLP Policies ER1 concerning flood risk and ER2 dealing with water management.

Highway safety and sustainable transport

12. The proposal includes the creation of a vehicular access off Totnes Road (A385), with appropriate visibility splays, that would include a designated right-hand turn lane into the site. Provision would be made for the relocation of the 30/40 mph speed restriction boundary. The highway authority does not object to the access or the likely impact of traffic from the appeal scheme upon the road network. The evidence indicates that the scheme would not have an unacceptable adverse effect on highway safety. It would make adequate provision towards funding to support strategic connectivity between local employment areas and Paignton town centre, and would provide for a travel plan. I am satisfied that the development would make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. I find no conflict with TLP Policy TA1 dealing with transport and accessibility, or with Policy TA2 regarding access.

Infrastructure provision

13. There is local concern about the effects of an additional 73 dwellings on local infrastructure providing necessary services and facilities, such as healthcare.

However, the scheme would make appropriate contributions towards open space, education and local libraries. I am not convinced that the additional dwellings would place an unacceptable burden on the operation of other local services and facilities. There is no evidence from the bodies responsible for the provision of such services that the appeal scheme, in combination with the proposed scheme by Bloor Homes for 100 dwellings on land within the same growth area (application P/2019/0281), would have an unacceptable adverse effect on local services. The likely effect of the appeal scheme on local infrastructure is not a consideration that weighs significantly against the proposal. I find no conflict with TLP Policy SS7 concerning infrastructure, phasing and delivery of development, or with Policy SS9 regarding green infrastructure.

Biodiversity

14. The site is within the Landscape Connectivity Zone for the South Hams Special Area of Conservation (SAC) with respect to greater horseshoe bats. Natural England considered the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, and agreed with the Council's assessment providing that all mitigation measures were appropriately secured. I have undertaken an appropriate assessment of the proposal in accordance with Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). On the evidence submitted, and with the appropriate mitigation, I conclude that the proposal would not be likely to give rise to a significant effect on the integrity of the SAC, when considered alone or in combination with other plans and projects. Subject to the imposition of appropriate conditions concerning biodiversity the development would comply with TLP Policy SS8 concerning the natural environment. It would also accord with Policies NC1 regarding biodiversity and C4 in relation to trees, hedgerows and natural features.

Heritage assets

15. The Grade II* listed Church of St Mary, Grade II listed Old School House and Grade II listed Old Vicarage lie to the east of the appeal site. The wider rural setting makes a contribution to the significance of these heritage assets. The development of the appeal site would, to some extent, detract from the appreciation of these as rural village buildings. This would result in less than substantial harm to the significance of the designated assets, but at the lower end of the scale. I have given considerable importance and weight to this harm. However, the contribution to housing supply, and particularly to affordable housing, is a public benefit that would outweigh this minor level of harm. There are four Grade II listed properties nearby on Totnes Road, but it was evident at my site visit that these have a limited setting that would be unaffected by the proposed development. Given the separation distance, intervening trees and local topography, the appeal scheme would have a neutral impact upon the setting of Blagdon Manor. I find no conflict with TLP Policies SS10 concerning the historic environment and HE1 regarding listed buildings.

Other matters

16. The Council considers that it can only demonstrate a 3 year supply of deliverable housing sites, which it acknowledges is a significant shortfall. The appellant argues that the supply is more likely to be 1.25 years. However, I do not consider it necessary to come to a precise figure for the purposes of determining this appeal. The addition of up to 73 dwellings would make a significant contribution to improving the supply of housing. The provision of 30% of the dwellings as affordable housing would be of particular benefit. The construction of the development and spending by future occupants would add to the local economy. These are benefits that weigh in favour of the scheme. The proposal would accord with TLP Policies SS12 and H1 concerning housing. The proposed provision for affordable housing complies with Policy H2.
17. There is local concern about the loss of farmland and pollution from noise and light. However, I do not consider that any adverse effects of the proposed development in this regard would weigh significantly against granting outline planning permission. I have taken into account all other matters raised in evidence but have found nothing to outweigh the main considerations that lead to my conclusion.

Planning balance and policy

18. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The development plan for the area includes the TLP and the Paignton Neighbourhood Plan 2012-2030 (PNP), which was adopted in June 2019.
19. The principle of residential development on this site is supported by TLP Strategic Policy SS1 with respect to the growth strategy. The site is identified in TLP Policies SS2/SPD3.3 as part of the wider Collaton St Mary (Paignton North and West Area) Future Growth Area. It is also identified for some housing development within the Collaton St Mary Masterplan, a Supplementary Planning Document for the area that was adopted in February 2016. I consider that the proposal would accord with TLP Policy SS11 concerning sustainable communities.
20. PNP Policy PNP1 provides that sustainable development will be achieved by ensuring a balanced provision of new development through supporting, amongst other things, foul and surface water drainage and other key infrastructure being required when major development applications are first submitted, and not being dealt with subsequently by conditions. I read 'supporting' here as encouraging. Read this way the policy does not rule out the possibility of achieving sustainable development by dealing with drainage by way of imposing appropriate planning conditions. This would be a matter to determine in the particular circumstances. I find no compelling evidence here to require detailed drainage considerations to be determined in granting outline planning permission. In any event, I do not consider that any conflict that arises in this case with PNP Policy PNP1 would be sufficient to bring the proposal into conflict with the development plan as a whole given the support it gains from other relevant policies.
21. PNP Policy PNP24 concerns Collaton St Mary village. The proposed development would accord with the provisions of PNP24 concerning any further

development beyond the currently developed areas only being supported where the proposals are in accordance with the adopted masterplan for the area. PNP24 notes that foul and surface water disposal and flooding have become a significant problem. However, the evidence adduced demonstrates, subject to appropriate conditions and obligations, that sufficient capacity exists to accommodate the additional development and not cause any risk of flooding to existing properties. On the same basis, it has been demonstrated that there is adequate infrastructure to provide for the development.

22. The proposal would gain support from TLP Policy SS3, which establishes the presumption in favour of sustainable development. I find that the proposal would accord with the development plan as a whole. However, Footnote 7 of the *National Planning Policy Framework* provides that if the Council cannot demonstrate a five year supply of deliverable housing sites the policies which are most important for determining the application are out-of-date. As the development plan is not up-to-date *Framework* paragraph 11.c) does not apply and 11.d) is triggered. I do not consider that the harm I have identified to listed buildings provides a clear reason for refusing the development proposed for the purposes of applying paragraph 11.d) i. Applying paragraph 11.d) ii. the slight harm to the character and appearance of the area and minor harm to heritage assets would not significantly and demonstrably outweigh the benefits of the scheme, and so the planning balance here falls in favour of the development.

Conditions and obligations

Planning conditions

23. The Council's position regarding possible conditions was not made clear in the Questionnaire, but it was later clarified that the conditions should be as per the committee report for application P/2019/0604, about which the appellant included comment in its Statement of Case. Subsequently the Council submitted the report and suggested conditions for the duplicate application (P/2020/0405) and requested that these conditions should apply. However, the appellant has not commented on these as part of the current appeal. I have, therefore, dealt with the suggested conditions on the basis of the Council's email dated 23 September 2020, which refers to the report for application P/2019/0604. I have considered the need for the suggested conditions and their wording in the light of the advice contained in the *Planning Practice Guidance*.
24. The standard conditions for an outline planning permission would be appropriate here (Conditions 1-3). 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 to accord with the details considered at appeal (Condition 4).
25. Controls of lighting would be necessary in the interests of the amenity of the area and for nature conservation reasons (Condition 5). For similar reasons, a construction environment management plan would be required (Condition 6). Provisions to safeguard biodiversity would be necessary (Conditions 7, 8 and 12). A condition to secure a pedestrian crossing to the west of the site, and works to create a foot/cycle route connecting the site to Blagdon Road would be necessary for highway safety reasons (Condition 9). A scheme for the treatment of surface water that demonstrates that the risk of flooding would

not be increased would be necessary to accord with Policies ER1 and ER2 of the TLP (Condition 10).

26. A scheme for affordable housing would be necessary to give effect to TLP Policy H2 (Condition 11). A construction method statement would be required in the interests of the amenity of the area (Condition 13). A travel plan would reduce the impact of the development upon the transport network, in accordance with TLP Policy TA2 (Condition 14). Energy efficiency measures would be required in accordance with PNP Policy PNP1 and TLP Policy SS14 (Condition 15).

Obligations

27. I am satisfied that the obligations in the unilateral undertaking are compatible with the tests for planning obligations set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
28. There is no convincing evidence that the draft Planning Contributions and Affordable Housing SPD should, at this stage, be given more weight than the adopted version. For the avoidance of doubt, with respect to Schedule 1 paragraph 3.2 of the unilateral undertaking, I make no finding that the Adapted Dwellings should be constructed to the specification contained in Appendix B to the Deed.

Conclusions

29. The planning balance here falls in favour of the proposed development. Subject to the suggested planning conditions and the obligations in the unilateral undertaking, I find that the proposal would comply with the development plan as a whole. Furthermore, the scheme would gain some support from national policy. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Woolcock
Inspector

Schedule of Conditions (1-15)

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan PL101, Existing Site Plan PL102 and Proposed Access Layout Plan 16867 GA-04 rev J.
- 5) All reserved matters applications shall include a Lighting Assessment, including a lux contour plan, for both public-realm and domestic lighting in combination with any existing light sources in the locality to demonstrate compliance with the 0.5 lux design parameter set out in the Shadow HRA (EAD Ecology, May 2019).
- 6) All reserved matters applications shall include a Construction Environmental Management Plan (CEMP: Biodiversity), which shall have been prepared in accordance with specifications in BS42020 clause 10.2 and shall include the following: a) Risk assessment of potentially damaging construction activities. b) Identification of 'biodiversity protection zones'. c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements). d) The location and timing of sensitive works to avoid harm to biodiversity features including the use of protective fences, exclusion barriers and warning signs. e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP: Biodiversity, and the actions that will be undertaken. f) Responsible persons and lines of communication. g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise approved in advance and in writing by the Local Planning Authority.
- 7) All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020 clause 11.1, which shall be submitted and shall include, but not be limited to, the following: a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents. b) Ecological trends and constraints on site that might influence management. c) A habitat phasing plan to ensure habitat is established and functional in advance of impacts. d) Aims and objectives of management. e) Appropriate management options for achieving aims and objectives noting the comments from Natural England with regards to preferred hedgerow management

options. f) Prescriptions for management actions. g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period). h) Details of the body or organisation responsible for implementation of the plan. i) On-going monitoring and remedial measures for biodiversity features included in the LEMP. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the approved LEMP.

- 8) All reserved matters applications shall include a monitoring strategy which shall be prepared to provide early warning of any change in site conditions (such as those brought about by loss of suitable habitat features or adverse light spill) that are likely to impair or disturb greater horseshoe bats being able to commute through the site adjacent to the site boundary. The strategy will be prepared in accordance with the specifications in BS42020 clause 11.2.3 and shall include the following.
 - a) Aims and objectives of monitoring to match the stated purpose.
 - b) Identification of adequate baseline conditions prior to the start of development (including light levels within the dark areas).
 - c) Appropriate success criteria, thresholds, triggers and targets against which the continued effectiveness of the bats' commuting routes can be judged.
 - d) Methods for data gathering and analysis (to include appropriate bat surveys and light monitoring).
 - e) Location of monitoring/sampling points.
 - f) Timing and duration of monitoring.
 - g) Responsible persons and lines of communication.
 - h) Contingencies and remedial measures that will be triggered should monitoring detect a change in site conditions.
 - i) Review, and where appropriate, publication of results and outcomes. A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals as identified in the Strategy. The report shall also set out where the results from monitoring show that site conditions are changing and consequently how contingencies and/or remedial action will be identified, approved in writing by the local planning authority, and then implemented so that the development still delivers the fully functioning bat commuting routes associated with the originally approved scheme. The monitoring strategy will be implemented in accordance with the approved details.
- 9) Prior to commencement of development, a section 278 Agreement shall be entered into with the Highway Authority to secure pedestrian crossing facilities adjacent to the existing bus stops to the west of the site within the vicinity of the proposed LEAP and adjacent to the proposed vehicular junction, together with works to create a foot/cycle route that connects the eastern edge of the site to the junction/crossing of Blagdon Road. The approved works shall be delivered in accordance with the Agreement.
- 10) As part of any reserved matters application a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in line with the design parameters outlined within the submitted and approved Flood Risk Assessment, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development unless a phasing plan has been submitted to and approved

- by the Local Planning Authority, and the approved scheme shall be subsequently maintained thereafter.
- 11) As part of any application for reserved matters relating to the proposal's layout and scale, a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority. The submitted details shall include information about the siting, size, and tenure type of the affordable units. The development shall be undertaken in accordance with the approved details.
 - 12) As part of any application for reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise been approved in writing by the Local Planning Authority, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.
 - 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:
 - a) The parking of vehicles of site operatives and visitors.
 - b) Loading and unloading of plant and materials.
 - c) Storage of plant and materials used in constructing the development.
 - d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
 - e) Wheel washing facilities.
 - f) Measures to control the emission of dust and dirt during construction.
 - g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
 - h) Measures to minimise noise nuisance to neighbours from plant and machinery.
 - i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
 - 14) The submitted Travel Plan prepared by WSP, dated May 2019, shall be implemented in full. Should the annual review show that the development is failing to secure a modal shift of 30% of potential users to sustainable modes of travel, additional measures shall be approved in writing by the Local Planning Authority and implemented.
 - 15) As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The measures in relation to each residential unit shall be completed, in accordance with the approved details, prior to the first occupation of that unit and shall thereafter be retained.