

Application No. 18/00177/FULL

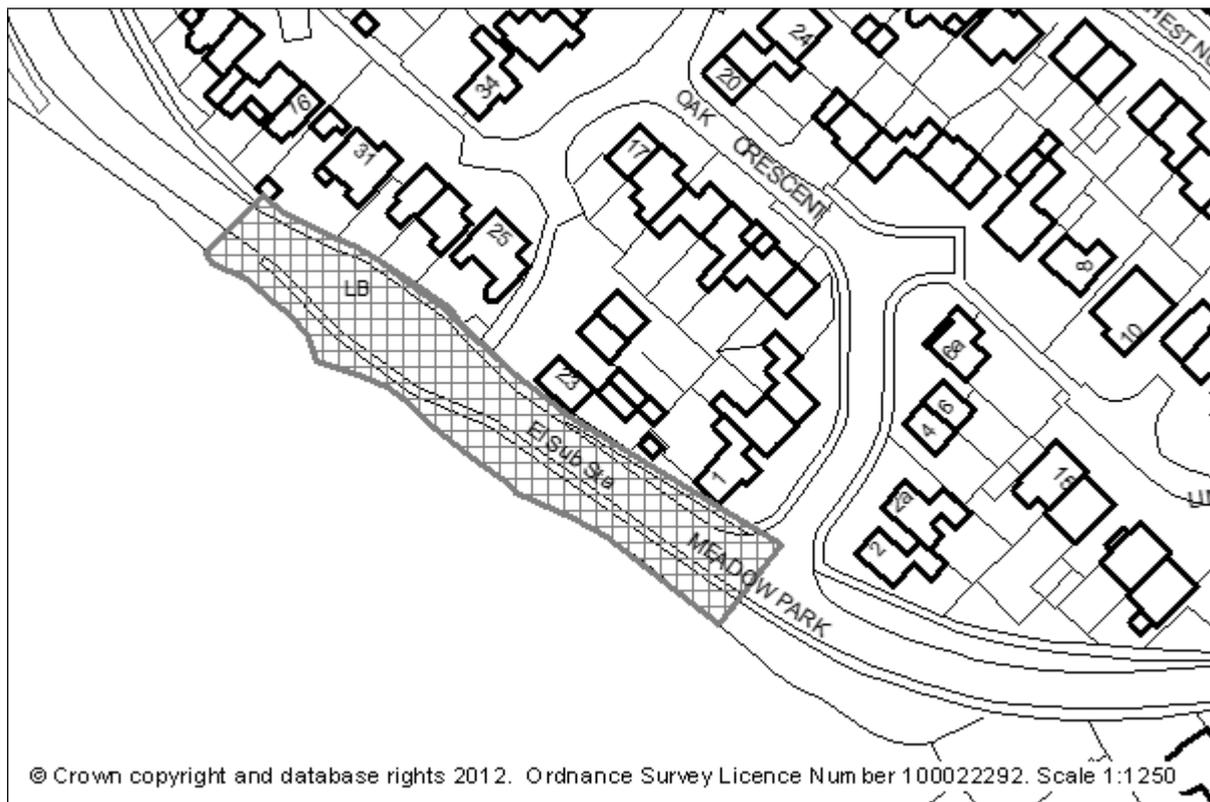
Grid Ref: 110748 : 303174

Applicant: Gallagher Estates Ltd
and Ms Joanne
Richards

Location: Land at NGR 303174
110748 Meadow Park
Willand Devon

Proposal: Creation of new
access for residential
development of up to
125 dwellings

Date Valid: 26th January 2018



REPORT OF THE HEAD OF PLANNING AND REGENERATION

18/00177/FULL - CREATION OF NEW ACCESS FOR RESIDENTIAL DEVELOPMENT OF UP TO 125 DWELLINGS - LAND AT NGR 303174 110748 MEADOW PARK WILLAND DEVON

Reason for Report:

At the Planning Committee meeting on 5th September, Members advised that they were minded to refuse the associated application 18/00175/MOUT and invited a further report to set out the implications of the determination this application for the access in light of a possible refusal on the application for 125 dwellings.

RECOMMENDATION(S)

Grant permission subject to conditions

Relationship to Corporate Plan:

Homes

- Facilitating the housing growth that Mid Devon needs, including affordable housing
- Planning and enhancing the built environment

Environment

- Protect the natural environment

Financial Implications:

An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal-in line with the development plan and all other material considerations.

Legal Implications:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 5th September 2018 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal and negotiate and complete a section 106 agreement. External legal representation may be required if the appeal proceeds to a public inquiry.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

Consultation carried out with:

1. Statutory consultees

1.0 BACKGROUND:

1.1 At the meeting on 5th September, Members indicated they were minded to refuse the associated outline application for 125 dwellings and were unclear how they could favourably determine this associated application. As a result they deferred the application for consideration of an implications report to consider the consequences of any decision to grant planning permission for this application in the event that planning application 18/00175/MOUT not be granted.

2.0 FURTHER OFFICER ADVICE:

2.1 The application proposes an access from the road known as Meadow Park into land currently allocated in the Local Plan Review for 42 dwellings.

Policy W11 states:

A site of 2.9 hectares at land east of M5, Willand, is allocated for residential development subject to the following:

- a) 42 dwellings with 30% affordable housing;*
- b) Provision of buffer zone and appropriate planting to mitigate noise from the adjacent motorway;*
- c) Mitigation of any wildlife impact including protection of trees;*
- d) Transport assessment of capacity at the junction of Silver Street and Meadow Park; and*
- e) Retention and enhancement of the public right of way.*

2.2 Members expressed concern that if they wished to refuse the planning application for 125 dwellings, it paints a confusing picture for members of the public if an access for up to 125 dwellings, is approved.

2.3 Whilst officers fully understand this, the key is in the words 'up to' in the description of the application. The land is allocated in the Local Plan Review and will therefore need an access to be provided to facilitate that development. The application is only for the access (which happens to be of a design capable of taking up to 125 dwellings). Members are advised that the fact that an access is built which could accommodate 125 dwellings, does not commit the Local Planning Authority to accepting an application for that number of dwellings.

2.4 The proposed access has been designed to the standard expected to serve up to 125 dwellings but this is the same standard as would be required for 42 dwellings in any event so the design of the access would be no different if only 42 dwellings came forward. It is unfortunate that the application description referred to a number of dwellings within it, rather than just being an access to serve residential development. This has led to confusion and concern in members minds. It is worth emphasising though that the words 'up to' do not fix the applicant or the LPA to precisely that number (in just the same way as outline applications).

2.5 It is for this reason that officers previously identified that the two applications can be considered in isolation. Had the application been for an access to serve the 125 dwellings, then the officer advice in the light of a refusal on the application for 125 dwellings, would have been different.

2.6 In the event that members refuse application 18/00175/MOUT for the dwellings, it is not considered that Members would prejudice their case at appeal for the above reasons, if they granted consent for this application

2.7 Members have not previously identified any highway safety concerns with the application and no highway safety implications have been identified by Devon County Highways as statutory consultee and therefore it is not recommended that this be cited as a reason for refusal.

2.8 Equally concerns about visual impact have not been raised and in fact the proposed location for the access would seem logical as it would limit the number of trees and amount of hedge which would need to be removed to access an allocated site

2.9 Consequently your officers continue to advise that in the event of a refusal the authority's chance of success at appeal would be very limited but the chance of costs being awarded would be high.

3.0 **REASONS FOR REFUSAL:**

3.1 If, having considered all the above, members remain concerned about the confusing picture this presents for the public then consideration should be given to the following reason for refusal:

1) The associated planning application (ref: 18/00175/MOUT) for the development of 125 dwellings has been refused. The site lies outside the settlement limit of Willand and is not currently allocated for development in the Local Plan. As such, it is not considered that there is any justification at present for an access for residential development at the site, contrary to policy COR18 of the Mid Devon Core Strategy (Local Plan Part 1)

Contact for any more information

Alison Fish (ext 4266)

Background Papers

Application file and documents

File Reference

18/00177/FULL

Circulation of the Report

Cllrs Richard Chesterton