

REPORT OF THE HEAD OF PLANNING AND REGENERATION

17/01359/MOUT - Outline for the erection of 60 dwellings and construction of new vehicular access onto highway to the West of the site, along with 3 pedestrian/cycle access points to serve the site, with all other matters to be reserved – land and Buildings at NGR 302469 114078, High Town, Sampford Peverell

Description of Development:

This application seeks outline planning permission for the erection of 60 dwellings, access, public open space, landscaping, and associated works on land to the west of the village of Sandford Peverell. Access is to be determined as part of this application with all other matters reserved for future consideration.

The application site is proposed to utilise a new access to the west of the site breaching a low-level stone wall, which will be replaced behind any visibility line. This access is off an unnamed rural road between Battens Cross and Higher Town. In addition to the main vehicular entrance there are to be three further pedestrian and cycle way links, off Battens Cross (Pedestrian only), Turnpike and Highertown.

The application site is outside of any defined settlement limits of a village or town and so is in the countryside in planning terms. Furthermore, other than for the access, the site of this application does form part of a proposed allocation for development in the Local Plan Review SP2, which will also alter the settlement limits to encompass the site.

The site is sloping north south and in an elevated position. It is bound to the northern boundary, part of the eastern boundary, southern boundary and part of the western boundary by trees and hedging, and generally sits above the road level to the south and north by approximately 2.5m.

REASON FOR REPORT: To consider the reasons for refusal proposed by the Planning Committee at the meeting of 11th June 2018 in light of further advice from Officers.

RECOMMENDATION(S)

Grant permission subject to conditions and the signing of a S106 agreement to secure.

1. 35% affordable housing on-site (21 dwellings, tenure and mix to be agreed)
2. Financial contributions towards primary, early years and secondary education totalling £243,398 Broken down as set out below
The contribution sought is £197,289 (based on the DfE extension rate of £21,921 per pupil) which will be used to provide education facilities to meet the need arising from those living in the development.
Devon County Council has also requested a financial contribution of £30,609 towards secondary school transport costs due to the development being further than 2.25 miles from Uffculme School. The costs required are as follows: -

9.00 secondary pupils

£3.58 per day x 9 pupils x 190 academic days x 5 years = £30,609

In addition, a contribution towards Early Years provision is needed to ensure delivery of provision for 2, 3 and 4 year olds. This would cost approximately £15,000 (based on £250 per dwelling). This will be used to provide early years provision for pupils likely to be generated by the proposed development.

3. Public open space/green infrastructure to be offered together with a commuted sum for maintenance by a management company maintenance (amount to be agreed);
4. A travel plan to reduce the reliance on private motor vehicles.
5. A management plan to protect the future of the remaining GI space from future development

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 will 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 11th June 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.

1.0 Introduction

1.1 At the Planning Committee held on 11th June 2018 Members of Planning Committee resolved that they were minded to refuse the above application contrary to officer recommendation and requested a further report to consider the following suggested reasons for refusal –

- A) The proposed outline application for 60 dwellings on this prominent site will have a significant adverse visual impact on the surrounding landscape character and appearance.
- B) The site is not considered to be a sustainable location for this scale of housing development due to poor pedestrian access. 60 dwellings would be a significant increase in the population of the village, which has little employment and which would result in an unsustainable pattern of car-based commuting.

- C) The introduction of the substandard pedestrian footway at Sampford Peverell and the associated crossing points are considered to be unacceptable and unsafe. The introduction of 60 dwellings on this site will create a substantial increase in the numbers of cars which will need to access Sampford Peverell.

2.0 Letter from the Planning Inspectorate following the recent hearing on the Local Plan

2.1 Since the planning committee meeting of the 11th June Members will be aware that this sites acceptability for inclusion in the Local Plan Review (LPR) was assessed by the Planning Inspector at the LPR hearing session which took place on 20th - 21st November 2018. The Inspector has now reported his findings and these are attached below.

To Mid Devon District Council

I have given a great deal of thought to what I heard at the recent Preliminary Hearings and having done so, I am content that the Examination should continue to Main Hearings and I will now be working on a series of Matters and Issues with a view to making these available in early December 2018. At this stage, I expect the Main Hearings to occupy 8 sitting days, over two consecutive weeks, if possible.

There are some preliminary conclusions that it might be useful to share, at this stage. In terms of Policy J27, I am obviously conscious of advice in (the previous version of) the Framework that Plans should be aspirational but realistic. In that context, I see no 'in principle' difficulty with the allocation. Moreover, from what I heard, it seems that a development of the nature proposed (or something broadly similar) could take place without any significant adverse impacts on the economic, social, or environmental dimensions of sustainable development. That said, bearing in mind the nature of the evidence base, I have some reservations about the detailed and specific nature of the policy as drafted, and the way it seems to be directed at a particular scheme, rather than more generally at a tourism-based development. This may have the effect of preventing other schemes, that take a different approach to the site, or the mix of uses on it, coming forward. I propose therefore to address this point, and the precise wording of the policy, in one of Main Hearings.

In terms of Policy SP2, I recognise the strong feelings it has generated amongst the local community. Nevertheless, and bearing in mind that such exercises inevitably involve matters of judgment, I do not share the view, expressed by some, that the process by which the site was selected over others was flawed. In particular, I am content that the Council's conclusion that development of the site proposed for allocation could take place with very little or no harmful impact on the setting or the significance of the Grand Western Canal Conservation Area is not an unreasonable one. There are some aspects of the detailed wording of the policy that I will want to return to in one of the Main Hearings.

On the basis of the useful discussion, and contributions made by the EA, the allocation of the Policy TIV16 site is soundly based, and there is no need for a tie within it to Policy J27.

Mid Devon Local Plan Review 2013-2033
Proposed Submission (incorporating proposed modifications)
Examination

Inspector: Paul Griffiths BSc (Hons) BArch IHBC

POST-HEARINGS ADVICE NOTE

21/05/19

Policy SP2

This was discussed in some detail at the Hearings. I would observe first of all that the Plan's OAN of 7860 (393 pa) is an overall figure that reflects the inclusion of the Policy J27 allocation. Given that the Policy SP2 allocation is included so that the overall housing requirement can be addressed; the tie to Policy J27 serves no purpose. Reference to it should be removed.

Moreover, it was clear from the helpful submissions of the Highway Authority, that the limitation on development until the completion of improved access works to the A361 is unnecessary. Criterion b) needs to be removed.

These changes will require Main Modification.

3.0 The implications of refusing the application

3.1 In respect of the determination of planning applications, the planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the development plan unless material indications indicate otherwise. The development plan is therefore the primary consideration and the NPPF acts as non-statutory guidance which should be taken as a material consideration and this is clear from paragraph 2 of the NPPF which states that it is a material consideration in planning decisions. In this instance, significant regard must be had to the content of the NPPF in-so-far as it relates to housing delivery. This is because the Local Plan review, although at an advanced stage, is not yet adopted as the development plan. Whilst the local plan review is accorded significant weight at this stage, the fact remains that the current development plan is out of date.

3.2 Paragraph 11 of the NPPF and sub note 7 states in part:

Approving development proposals that accord with an up-to –date development plan without delay; or

Where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date (7 footnote).

Footnote 7 This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in Paragraph 73). However MDDC are now able to demonstrate a 5 year land supply, although a number of policies are out of date including COR18

4.0 Consideration of the proposed reasons for refusal

4.1 Reason for Refusal 1

The proposed outline application for 60 dwellings on this prominent site will have a significant adverse visual impact on the surrounding landscape character and appearance.

4.2 The following section will assess the evidence to support the aforementioned suggested reason for refusal.

4.3 A Landscape and visual impact assessment (LVIA) was undertaken by the applicant which considered the impacts of the proposed site on the surrounding area which concluded:

The assessment has shown that landscape impacts would be largely as a result of the addition of built form on the site. Due to the scale, location and nature of the development it is not considered that this change will result in an important impact on the character of the wider study area or the more sensitive landscape such as the AONB which lies to the west of the site. Consideration has also been given to the landscape and setting on the Sampford Peverell Conservation Area, Grand Western canal Conservation Area and the listed building 42 Highertown located adjacent to the site.

4.4 The Local Authority also instructed independent assessment of the applicants (LVIA) Their review was broadly in agreement with the applicants LVIA's main conclusions, they did identify a number of areas where the LVIA would benefit from further evaluation of landscape and visual effects to present a clearer picture to the local Authority. The Authorities Consultants considered that the visual effects are not likely to be at a level that would be unacceptable. It is important to also note that the extent and nature of effects will depend on the final layout, detail design and quality of mitigation, which will be fully considered at reserved matters stage.

4.5 During the allocation of the site SP2 for the Local Plan Review a landscape character assessment was undertaken to consider the appropriateness of the site for development. The final proposal takes into consideration the elevated position of the site, with the highest ground to remain as undeveloped green space, low density to respect the existing character of the edge-of village housing.

4.6 The Planning Inspector when considering SP2 in the recent preliminary hearing for the local plan did not consider, the process of establishing the site for development was flawed, and stated "In particular, I am content that the Council's conclusion that development of the site proposed for allocation could take place with very little or no harmful impact on the setting or the significance of the Grand western Canal Conservation Area is not an unreasonable one". As part of this process the inspector did not suggest he wished to remove the site from the LPR and therefore considered the site as a suitable for housing development.

4.7 Officers are concerned that a reason for refusal on the grounds of adverse visual impact of the development would conflict with the applicants and MDDC consultants LVIA's and the Inspectors recommendation to bring the site forward for development in the Local Plan Review SP2. This could lead to an application for an award of costs should a decision to refuse outline planning permission be appealed.

4.8 In relation to costs applications, the Planning Practice Guidance states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The following are selected examples given in the Guidance:

- Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;

- Not determining similar cases in a consistent manner.

The two bullet point examples given above are considered relevant should this application be refused on adverse visual impact of the development. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

5.0 Reason for refusal 2

The site is not considered to be a sustainable location for this scale of housing development due to poor pedestrian access. 60 dwellings would be a significant increase in the population of the village, which has little employment and which would result in an unsustainable pattern of car-based commuting.

5.1 Having regard to the inspector's letter which retained the site as part of the LPR, your officers would advise that the Inspector has clearly advised that site is considered as sustainable. In view of this officers feel that the 2nd suggested reason for refusal is now no longer supportable. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

6.0 Reason for refusal 3

The introduction of the substandard pedestrian footway at Sampford Peverell and the associated crossing points are considered to be unacceptable and unsafe. The introduction of 60 dwellings on this site will create a substantial increase in the numbers of cars which will need to access Sampford Peverell.

6.1 Devon County Council Highways have commented on this application and assessed the proposal, they are of the view that although the proposed is below the standard they would wish to see for this area around Sampford Bridge their professional opinion is that the proposal provides an improvement to the present situation.

6.2 The Authority commissioned an independent review to assess the appropriateness and safety of:

- a. The vehicular access
- b. All pedestrian and cycle accesses
- c. The offsite works by the Listed Bridge to provide a new footpath and crossing point.

In addition it also requested an assessment on whether a condition requesting the development of improved access works to the A361 junction at Sampford Peverell would be reasonable and legitimate.

This report is now available and published as part of this application.

The appointed consultants have made suggestions for improvements in their report but have also advised that they "cannot find sufficient grounds for refusing the application on highway safety grounds" and they have gone on to clarify that "All the points mentioned in our assessment would help the scheme be safer and more convenient for its use by all people accessing and egressing the site, however, and based on our wide and extensive experience in the preparation of transport reports and schemes in support of outline planning applications, we do not find the proposed scheme to cause a "severe" impact in highway safety as based on the NPPF and would be difficult to defend highway safety as a reason for refusal on any subsequent appeal that may happen in the future.

Furthermore, DCC Highways did not raise any objections in terms of highway safety, which would make the case more difficult to defend”

6.3 The next section of the report considers the MDDC appointed consultants suggested points to help the scheme be safer and more convenient.

6.4 With regard to the main point of access the consultants considered that although appropriate there were measures which could be included to make this part of the proposal safer these suggestions were as follows:

- a) Increase the width of the main site access road and the loop road to 5.5m rather than 4.8m.
The applicant has submitted amended plans to provide a 5.5m wide site access.
- b) The 1.0m distance (away from the nearside of the road in either direction as set out in Manual for Streets) in this case is likely to be too great and a figure of 0.5m would be more appropriate for calculating the visibility splay.
DCC highways Authority are content with the process the applicant has utilised as such there is to be no change to this part of the proposal. It is considered that it is improbable that a cyclist would be both obscured within a 1.0m corridor from the carriageway edge and be travelling uphill at 30mph in this area.
- c) Forward visibility on the area from the access to Battens cross has been taken as the centre line of the road rather than the centre of the inner lane as recommended in Manual for Streets. Therefore it would be more beneficial to have this amended. The bend should also be widened to 6.5m to ensure that two large vehicles can pass.
This road does not have a centre (marking) line, it has been agreed with DCC that the splays as shown by Hydrock are acceptable. DCC have also agreed that the MDDC consultants proposal to increase the width of the carriage way would not only cause undue impact on the existing remaining verge but would be likely to increase the potential for higher speeds. On this basis DCC have agreed that the submitted existing scheme is a more suitable and acceptable in this situation.

6.5 Pedestrian and cycle accesses

- a) Turnpike Consistency with other visibility splays need to be maintained with the visibility splay provision to be considered on 0.5m rather than the 1.0m. It is considered that there should be a provision of 30mph at this point to reduce speeds. (it is understood that this will be the case).
It is considered by DCC that a dropped curb should be included to the west of the proposed access for cyclists to leave the highway. DCC have agreed that there is no need to alter the visibility splays as suggested by Trace Design as this would not be betterment; the applicant has provided amended drawings to the access point to include an additional dropped curb on Turnpike road.
- b) Higher Town again consistency with visibility to be 0.5m rather than 1.0m. No details provided of the width of the road along this point and of any pinch points, and that the width at the give way line is given and be a minimum of 4.8m. Provision of passing bays to provide 5.5m

width. Also provide carriageway width just to the north east of the red line boundary to consider the impact of the building.

DCC have confirmed that the highway safety improvement scheme was sought by DCC in order to provide a wider benefit to the village. However on noting that the site itself will give rise to very little traffic on Higher Town, DCC have agreed that the provision of widenings, passing places, etc. would be unreasonable as it would be unrelated to the effect of the proposed development.

- d) Pedestrian Link to GWC there is no connection between the dropped curbs and the route leading to the canal. The land for the foot path is not highway land and confirmation of the land being available for development is required. There are two routes shown to the canal one needs to be provided.

The pedestrian link does not now go through the field access on the south side of Turnpike. Therefore no third-party land issues exist.

6.6 Off site works by Sampford Bridge

- a) Visibility splays should be consistent and realistic, and should be provided utilising the 0.5m off the kerb. Although substandard visibility splays it is considered by DCC to be an improvement to the local highway against its existing situation.

6.7 A361 Slip Road

- a) Traffic generation is low and unlikely to have a significant impact on the local highway network, and so would be minimal on the Sampford Peverell junction to the A361. A specific condition would not be reasonable to make the site acceptable and so would not meet the tests required for a condition.

- 6.8 In view of the above officers feel it is important to emphasise again that our appointed consultants "cannot find sufficient grounds for refusing the application on highway safety grounds". Whilst they have suggested improvements, these are to help the scheme to be safer and more convenient for people accessing and egressing the site. Where appropriate these suggestions have now been included by the applicant following consultation with DCC highways. It is however important to emphasise that the MDDC appointed consultants have advised that "based on our wide and extensive experience in the preparation of transport reports and schemes in support of outline planning applications, we do not find the proposed scheme to cause a "severe" impact in highway safety as based on the NPPF and would be difficult to defend highway safety as a reason for refusal on any subsequent appeal that may happen in the future. Furthermore, DCC Highways did not raise any objections in terms of highway safety, which would make the case more difficult to defend"

- 6.9 In view of this additional expert highways advice your officers would advise that the 3rd suggested reason for refusal would be very difficult to defend given the expert Highways advice received on this application. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

7.0 Conclusion:

7.1 The Council has submitted the Local Plan Review for examination and has granted planning permission for a number of applications for residential development. Mid Devon District: Housing land supply and application of development plan policies position statement at 16 April 2019 is set out below:

The 2019 NPPF and updated planning practice guidance make clear the need to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against local housing need (based on the Government's standard method), where strategic policies are more than five years old. The approach takes account of the recently published Housing Delivery Test results.

A 7.43 year housing land supply can be demonstrated against an annual housing need of 364 for the period 1 April 2018 to 31 March 2023. This takes account of the identified supply of deliverable sites and a 5% buffer based on the results of the Housing Delivery Test.

Notwithstanding that a 5 year supply requirement has been met, adopted Mid Devon Core Strategy Policies COR3, COR17 and COR18 are not consistent with relevant policies in the 2019 NPPF and therefore should be accorded limited weight in planning decisions until they are replaced. The tilted balance will continue to apply to the determination of planning applications concerning proposed housing development in Mid Devon.

Draft policies in the Mid Devon Local Plan Review, where relevant, will be material to the determination of planning proposals and weight given in accordance with paragraph 48 of the 2019 NPPF. The adoption of the Mid Devon Local Plan Review will establish a new housing land supply position and policies that will carry full legal weight for the determination of planning applications concerning proposed housing development in Mid Devon.

Other development plans, including the Devon Minerals and Waste Local Plans and Neighbourhood Development Plans (once 'made'), adopted masterplans and supplementary planning documents, where relevant, can also be material to the determination of planning proposals for housing development.

Whilst the Local Plan Review has been submitted to the Planning Inspectorate for examination, and it has been through its final examination, the hearing has been undertaken and the letter(s) submitted by the Planning Inspectorate sets out his thoughts in paragraph 2.1 above - this indicates that the site is acceptable the need for a link with the A361 and J27 are no-longer required and the process of allocating it is not flawed. The proposed allocations and delivery policies of the Local Plan Review have not been shown to be sound as yet and the plan must therefore be afforded restricted weight in the determination of this application. The Local Planning Authority can now demonstrate a 5-year supply of deliverable housing land although some policies relating to the supply of housing are out-of-date as stated above. Other policies, such as policy COR18 which restrict the pattern of development are also afforded limited weight in the context of considering whether or not the application would amount to sustainable development when assessed against paragraph 11 of the NPPF.

In this instance and having regard to the findings of the appeal inspector, a reason for refusal on the grounds of adverse visual impact of the development' sustainability of the site and highways impacts is not recommended.

Your Officers are of the opinion that refusal of this current planning application for the reasons given cannot be substantiated and approval remains the recommendation.

Contact for any more information

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Background Papers

Committee report

File Reference

17/01359/MOUT

Circulation of the Report

Cllr Graeme Barnell
Members of Planning Committee