



# Appeal Decision

Hearing Held on 4 August 2022

Site visits made on 17 July and 4 August 2022

**by Mrs H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 August 2022**

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## Appeal Ref: APP/K1128/W/21/3296573

### Land at Garden Mill, Derby Road, Kingsbridge TQ7 1SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Blakesley Estates (Kingsbridge) Ltd against South Hams District Council.
- The application Ref 3122/21/VAR is dated 9 August 2021.
- The application sought planning permission for a residential development of 32 dwellings without complying with conditions attached to planning permission Refs 28/1560/15/O APP/K1128/W/16/3156062, dated 5 June 2017 and 0826/20/ARM dated 21 December 2020.
- The conditions in dispute are Nos 7 of Ref 28/1560/15/O (appeal Ref APP/K1128/W/16/3156062) and No 1 of 0826/20/ARM which respectively state that: "*The development hereby permitted shall be carried out in accordance with the following approved plans...*" (Condition 7 of APP/K1128/W/16/3156062, plans listed below<sup>1</sup>) and "*The development hereby permitted shall be carried out in accordance with the application form and the following approved plans/documents...*" (condition 1 of 0826/20/ARM, plans also listed below<sup>2</sup>).
- The reasons given for the conditions are: "...for certainty" and "In order to ensure compliance with the approved drawings".

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## Decision

1. The appeal is dismissed.

## Background and Procedural Matters

2. The appeal site is subject to an extant planning permission for a residential development of 32no. dwellings under Refs 28/1560/15/O (appeal Ref APP/K1128/W/16/3156062) (outline permission), a subsequent reserved matters approval, Ref 0826/20/ARM and non-material amendment, Ref 3377/20/NMM. Taken together, those decisions represent the 'host permission' which the appellant seeks to develop without compliance with the relevant plans conditions. The proposal seeks to amend the layout, the designs of dwellings and the landscaping scheme.

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<sup>1</sup> Plan Refs - 215/06A, 215/11, 215/08, 215/09, 215/10, 215/29, 215/30, 215/31, 215/28, 215/13, 215/33, 215/12, 215/15, 215/14, 215/32, 215/34, 215/07A, 215/01A, 215/02A, 215/03A, 215/04B, 215/05A, 215/102A, 215/201, 215/17, 215/16, 215/19, 215/18, 215/21, 215/20, 215/22, 215/23, 215/24, 215/25, 215/26A, 215/27, 215/35, 215/101A and 215/103A.

<sup>2</sup> Plan Refs received 30th March 2020 - 215-35, 215-37, 215-38, 215-39, 215-40, 215-41, 215-42, 215-1024 and Received 16th November - 215-1021 Rev C, 215-1022 Rev A, 215-1023 Rev A and 215-1025 Rev C

3. Following a change accepted during the processing of the appeal application by the Council, the description of the proposal was detailed as an: "*Application for variation of condition 7 of outline application 28/1560/15/O (appeal ref: APP/K1128/W/16/3156062) to allow for revised dwelling design and layout and variation of condition 1 of reserved matters application 0826/20/ARM to allow for revised landscaping*". As the appeal has been advertised on this basis, I do not consider that any parties have been prejudiced by the change.
4. At the hearing, it was indicated that the examination on the emerging Kingsbridge, Alvington and Churchstow Neighbourhood Plan (eNP) had concluded with the Inspector's report having been issued on the 21 July 2022. The NP Steering Group have accepted the examiner's minor recommendations and expect that it will progress to referendum in due course. As the eNP is now a 'post-examination plan', the appellant was provided with an opportunity to comment on the implications of this change.
5. The parties were in agreement that construction activity had commenced on site. The appellant alleges that those works constitute a lawful commencement of the host permission and had submitted an application for a certificate of lawfulness (CLEUD) the day before the hearing to that effect. The appellant's contingent position is that, owing to the commonalities between the schemes, that the works would constitute a commencement of development of the appeal proposal, if the appeal were allowed, effectively making it partly retrospective. It is not the remit of this appeal to prejudice the outcome of the CLEUD. As such, whilst the condition of the site is noted and the host permission is still extant, I draw no conclusions on this aspect and have determined the appeal proposal entirely on its own merits.
6. A deed of variation to the existing unilateral undertaking was engrossed and submitted on the 3 August with an explanatory note agreed between the parties. An alternative version dated 17 August 2022 was submitted following the hearing, the additional content of which related to the matter of biodiversity net gain as discussed at the hearing. I address this further below.

### **Main Issues**

7. The Council's putative reasons for refusal are as follows:
  - "i. The appeal scheme would not contribute to meeting housing needs or redressing existing imbalances in housing stock. The proposed development is therefore contrary to policies SPT2 and DEV8 of the Joint Local Plan.*
  - ii. The appeal scheme does not represent good design, by virtue of a poor standard of amenity space to be provided to future occupiers, including substandard parking provision that would likely result in on-street parking and related conflicts between residents and other highway users. The proposed development is therefore contrary to policies SPT1, DEV10, DEV20, and DEV29 of the Joint Local Plan"*.
8. In light of the above and the agreed Statement of Common Ground, the main issues are:
  - whether the appeal scheme would provide a suitable housing mix to meet identified needs; and
  - whether the appeal scheme represents good design, with particular regard to parking and outdoor amenity space.

## Reasons

### *Housing Mix*

9. The host permission included a fixed housing mix that broadly comprised 13no. 2 beds, 11no. 3 beds and 8no. 4 beds. Of the total of 32, four would be affordable homes, secured by the unilateral undertaking.
10. The Plymouth and South West Devon Joint Local Plan 2019 – 2034 (JLP) was adopted in 2019, some two years after the outline permission was granted. The adoption of the JLP has brought about a material change in the policy landscape and it is not disputed that the JLP should attract anything less than full weight.
11. Policy SPT2 of the JLP sets out 12 criteria to guide how development and growth should take place in the Plan Area in order to create sustainable linked neighbourhoods and rural communities. Given that the host permission secures the principle of development, the alleged conflict is focussed on criteria (4), which requires that developments should have *"...a good balance of housing types and tenures to support a range of household sizes, ages and incomes to meet identified housing needs"*.
12. Policy DEV8 relates to meeting housing needs in areas outside of the Plymouth Plan Area, i.e. in the towns, villages and rural areas of West Devon and South Hams, otherwise known as the 'Thriving Towns and Villages Area' (TTVA). In order to widen opportunities for home ownership, meet the needs for social and rented housing and create inclusive mixed communities, Policy DEV8 (1) stipulates that developments should provide a *"....mix of housing sizes, types and tenure appropriate to the area and as supported by local housing evidence"*, including *"homes that redress an imbalance within the existing housing stock"*, *"housing suitable for households with specific need"* and *"dwellings most suited to younger people, working families and older people..."*.
13. The Joint Local Plan Supplementary Planning Document (SPD) (2020) assists with the implementation of policies of the JLP. With specific reference to Policy DEV8, the SPD highlights the high proportion of 4 or more bed homes within South Hames and West Devon relative to the rest of Devon and Cornwall, the under-occupation and inherent unaffordability of such to those on lower incomes, particularly in coastal settlements, and the resulting inability to create opportunities for home ownership.
14. The evidence offered by the Council is that in South Hams, when considering the current housing stock profile compared to what is predicted to be needed over the next 20 years, the percentage change required for one bed units is 13.2%, for two beds 36.1%, for three beds 32.6% and for four or more beds, only 18.2%. Amongst other evidence, including the Strategic Housing Market Needs Assessment<sup>3</sup>, this suggests that the existing housing stock is skewed towards larger houses and that 2 and 3 bed homes, as distinct house types, should each represent around a third of the new dwellings delivered in the area.
15. The eNP, Policy H2, as a significant material consideration supported by a locally-specific and recent Housing Needs Assessment<sup>4</sup>, also advocates the JLP

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<sup>3</sup> Strategic Housing Market Needs Assessment Part 2 – Objectively Assessed Need for Affordable Housing (2017)

<sup>4</sup> Kingsbridge, West Alvington and Churchstow Housing Needs Assessment (2021)

approach to ensure that new housing developments respond to local needs in terms of type, size, special needs, and tenure. It goes onto state that "...consideration should be given to provision of housing solutions for young families" and that it "supports opportunities for existing residents to downsize and make more larger units available to the market". The Housing Needs Assessment underpinning the eNP indicates that "...new development might benefit from a relatively even balance of home sizes".

16. According to the appellant's Rebuttal Statement and evidence offered verbally, the proposal seeks to provide 2no. 2 bed homes, 11no. 3 bed homes and 19no. 4+ bed homes and 0 no. 5 beds. There was dispute about how house types 'C1' and 'E1' should be treated owing to inconsistencies between the plans, viability appraisal and later evidence offered by the appellant. However, in my view, the C1 house type has 5 bedrooms with the fifth bedroom clearly capable of being used as a secondary lounge and/or home office space to suit the occupiers needs. The C1 is at least a generous 3 bed house type, and with an unusually large utility room relative to its overall size, has potential to be used as a 4 bed house. Even if the C1 is treated at face value as a 3 bed unit with a large utility room, the appeal scheme includes at least 27 additional bedrooms across all dwellings when compared to the host permission with the following breakdown of unit sizes expressed as a percentage: 2 bed units - 6% of total, 3 beds - 34%, 19no. 4 and 5 beds, 59%.
17. The appellant alleges that the development plan policies do not prescribe a precise housing mix and that there is still a need for the 32 dwellings in view of the overall JLP target of 26,700 homes, and that taken together the 2 and 3 beds represent 40% of the total units proposed. However, given the absence of 1 bed units, the smallest units at 2 beds only comprise 6% of the total. In my view, it is clear that with eleven of the two bed units having become 4 or 5 bed units, the scheme has become unbalanced and there would be a higher proportion of larger homes for which the evidence of local need and affordability is lacking. Conversely, the available evidence suggests that the larger house types are those for which there is the least need as a proportion of overall housing growth in the area. Therefore, whilst some changes may have been made to better address the site's technical constraints, these have been made without regard to the policy objective of better balancing the housing stock to meet local housing needs.
18. Drawing the above points together, allowing the proposed change from a scheme with a mix of housing and slight emphasis towards smaller unit types to a scheme dominated by such comparatively large units would perpetuate the imbalance in the housing stock. As such, the proposal would fail to provide a suitable housing mix to meet identified needs, thus conflicting with, in particular, Policies SPT2 (4) and DEV8 (1) of the JLP. For similar reasons, it would also fail to accord with Policy H2 of the eNP.

#### *Design – Parking and Amenity Space*

19. The rationale behind the changes to the layout were explained at the hearing and, on the whole, appeared logical and based on a far greater level of detail than that which fed into the host permission. The changes to the individual house types were also explained and include many measures that would make the units more accessible, more logically laid out, having further-reaching views and sunnier outside amenity spaces than the host permission. However,

the changes to the units have also largely resulted in them all increasing in size by a range of between 8 and 86sqm and, with the bedspace increases as noted above, this would be likely to create a further pressure for parking and outside amenity space than the host permission on a challenging and constrained site.

### *Parking*

20. Amongst other things, JLP Policy DEV29 (3) requires that new developments should ensure “...sufficient provision and management of car parking in order to protect the amenity of surrounding residential areas and ensure safety of the highway network”. The SPD provides an expectation of the Policy’s parking standards in terms of minimum provision and dimensions. For a 1 bed dwelling, 1 space is required, 2 spaces per 2 and 3 bed houses and 3 spaces for each house with 4 or more beds. In the context of these requirements, it is alleged by the Council that 22 of the proposed dwellings (69%) would have insufficient parking spaces to meet the needs of the increased number of occupants.
21. The eNP states in Policy T3 that: “Where achievable the indicative parking standards set out in the JLP SPD (2020) should be met; 1 bedroom 1 space plus 1 space per 3 dwellings for visitors; 2 bedrooms 2 spaces; 3 or more bedrooms 3 spaces”. Given that it refers to the SPD, it is unclear whether the requirement in Policy T3 for 3 parking spaces for 3 bed houses is an error or whether it was deliberately intended to exceed its requirements.
22. The appellant indicates that the SPD standards are indicative and that in fact, only 8 dwellings would not meet them. The shortcomings with the host permission have been highlighted as well, with driveways too short for cars on plots 13 and 24 and all 17no. garages too small relative to the current SPD standards (of 6.5m x 3.5m internal dimensions). The counter position offered by the appellant is that the site is in an accessible location, all garages at 3m x 6m would be sufficient to accommodate a car even if not to the precise SPD standard and that, on balance, the modest deviation therefrom does not result in a conflict with Policy DEV29(3).
23. From my reading of the evidence, if applying the newer SPD standards to the extant scheme, at least plots 13 and 24 would have insufficient parking spaces owing to the design deficiencies highlighted by the appellant. Assuming that the undersized garages would not be used for parking, the host permission would underdeliver a total of around 11 spaces.
24. In the appeal scheme, all 11no. garages are relied upon to achieve the SPD parking ratios and even then, 8 dwellings would still have insufficient parking in the order of 8 too few spaces. Whilst the garage spaces are marginally larger than those in the host permission, the question remains about whether they would be used for parking given the general inclination of householders not to do so unless they are optimally sized as per the SPD guidance. In the absence of other options, it is likely that at least some occupiers would use the garages for parking.
25. If the standards set by Policy T3 of the eNP are applied to either the host permission or the appeal scheme, both schemes would have a further deficit of around 11 car parking spaces for each of the 3 bed house types.
26. The point was made that the larger house types in the appeal scheme would offer greater flexibility and options for multi-generational living, but it is likely



that such increased capacity would result in greater demands for car parking. In addition, I have considered the tension between providing car parking and the desire to maximise the use of sustainable travel modes. However, the Policies of the JLP have been examined in the context of the need for such a shift, but also in recognition of the rural nature of settlements in the TTVAs. Taken together, the above factors lead me to conclude that the appeal scheme would result in a greater potential for a car-dominated streetscene and conflicts between road users than the host permission.

27. In view of the above, and despite the absence of an objection from the Local Highway Authority, the proposal would not represent good design, with particular regard to parking, and would thus conflict with, in particular, Policy DEV29(3) of the JLP and Policy DEV20 which requires development to achieve good standards of design. For similar reasons, it would also fail to accord with guidance in the SPD.
28. Whilst I have considered the eNP Policy T3 requirement, as both the appeal scheme and the host permission would fail to adhere to its expectations by the same degree, I do not specifically count this against the appeal scheme.

#### *Amenity Space*

29. JLP Policy DEV10(5) requires that in addition to all new dwellings needing to be of sufficient size to qualify as good quality accommodation, that "*sufficient external amenity space or private gardens should also be provided*". The SPD provides some detail about what is considered to be the minimum standard for useable gardens and indicates that terraced houses should have 50 sqm, semi-detached dwellings should have 75 sqm and detached dwellings should have 100sqm.
30. In relation to the host permission, the appeal decision notes the "*steep nature*" of many areas of the site that significantly limit the "*opportunity to create useable areas of private garden space*". The steep nature of much of the site still presents the same difficulties.
31. It is alleged that only 4 dwellings within the appeal scheme would not have a garden of a size to meet the quantitative requirements set out in the SPD. The Council have highlighted concerns with the method used to measure the garden areas and the increased demand for useable garden space. In respect of a number of plots, I too share the concerns that the amount of actual garden space has been overstated. Considered in the round, I have concerns that the gardens to serve around half of the number of dwellings proposed would be either deficient in either quantitative terms, qualitative terms, or both. That said, the host permission also appeared to have a number of shortcomings in respect of both quantitative and qualitative garden space provision.
32. As suggested by the SPD, I have considered the range of nearby parks, open spaces and sports facilities on which future occupiers could rely in order to meet some of their recreational needs, with the private gardens catering for the more immediate sitting out space and areas to hang washing. In some instances, the access to the private gardens and their siting in relation to the dwellings appears more logical than the host permission and some of these design enhancements would better serve the increased number of occupiers. I also accept the point made that the gardens in themselves would not be likely to be the 'pull factor' for the dwellings in either scheme, given the topography

of the site, likelihood of mutual overlooking and the more attractive open views to the north.

33. Taking all of these factors into account, on balance, the appeal scheme represents an acceptable standard of design, with particular regard to outdoor amenity space and therefore complies with, in particular, Policy DEV10(5) of the JLP.

### **Planning Obligations**

34. The existing planning obligation (a unilateral undertaking (UU)) is dated 25 April 2017. Two deeds of variation (DoVs) to this UU have been submitted. The DoV dated 3 August essentially sought to relinquish the rights to continue building the host permission, provides for five affordable homes (1 additional unit) and honours the obligations in relation to Landscape and Ecology Management Plan measures in the 2017 UU, albeit with some minor changes to wording. The alternative bilateral DoV, dated 17 August 2022, essentially provides for the same as the DoV dated 3 August but amended to reflect that the development would have commenced, if the appeal were allowed. It effectively supersedes the DoV of the 3 August.
35. I have noted the content of the DoV and the additional public benefit that it seeks to secure.

### **Biodiversity**

36. JLP Policy DEV26 (5) requires that net gains in biodiversity are sought from all major development proposals and the SPD sets out that the requirement for 10% measurable BNG from major developments is additional to the need for any mitigation and/or compensation. The appeal proposal is submitted with a *Biodiversity Net Gain Offsetting Strategy* to secure measures both on and offsite. Whilst the SPD anticipates that such BNG offsetting strategies will be secured either on land also in the ownership of the appellant or, alternatively, through financial contributions via planning obligation, the parties agreed on a planning condition to require the submission of the detailed strategy required in connection with the appeal scheme.
37. The BNG strategy is proposed to be addressed by way of planning condition for which the trigger would be prior to occupation of any dwelling. There is limited detail about what the strategy would entail, who the enforcing authority would be depending on its chosen location, and if such an arrangement can readily be secured without a financial commitment from the appellant that may be beyond the scope of a planning condition. The evidence offered in this regard does not offer the certainty that I need to ensure policy compliance. However, as the appeal is failing for other reasons in any event, this matter is not decisive.

### **Other Matters**

38. I have had regard to my statutory duties under S66(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 in relation to the desirability of preserving the Grade II listed building, Buttville House, its setting or any features of special architectural or historic interest which it possesses. Similarly, I have given weight to the need to conserve and enhance the landscape and scenic beauty in Areas of Outstanding Natural Beauty (AONBs), such as the South Devon AONB within which the appeal site is

located. However, as the appeal is failing for other reasons, these matters, largely agreed between the parties in any event, are not determinative.

### **Planning balance**

39. There is no dispute between the parties about the starting point for the determination of the appeal proposal under S38(6) of the Planning and Compulsory Purchase Act 2006 and it is not alleged that the development plan or any of its specific policies are out of date.
40. There is a fallback position which is extant at the time of writing, irrespective of any conclusion on whether a lawful commencement has yet been made, which for reasons stated, is not a decision that falls to me. The fallback is a significant material consideration which has been attributed due weight in my decision. I am also mindful of the mitigatory measures that could be secured via planning conditions or obligation. These matters attract neutral weight in the overall balance.
41. In respect of the scheme's inability to meet housing needs, it conflicts with the development plan. Though the acceptability of the design of the scheme pulls in both directions, the parking deficiencies are an indicator of a design shortcoming of the scheme which also brings it into conflict with the development plan. Though, given the relatively modest shortfall, the weight to be attached to this particular policy conflict is reduced.
42. However, whilst I acknowledge the broad conformity of the scheme with a majority of other policies and some areas where the policy requirements would be exceeded, the main conflict is so material to the outcomes for the receiving community and the ability to make progress towards such key aims of the development plan that it renders the scheme in conflict with it, when taken as a whole.
43. The public benefits of the scheme are broadly similar to those that would result from the host permission in terms of the overall contribution to housing stock and the economic input from the construction phase and thereafter. The extra public benefits that would accrue specifically from the appeal proposal would be largely limited to the additional affordable home and the increased number of accessible homes.
44. However, in my view, the public benefits are not sufficient to outweigh the identified harm and there are no other material considerations to indicate that a decision should be taken other than in accordance with the development plan.
45. Consequently, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR



## **APPEARANCES**

### **FOR THE APPELLANT:**

|                   |                              |
|-------------------|------------------------------|
| Mr Ian Roach      | Roach Planning               |
| Mr John Freeland  | Blakesley Estates            |
| Mr Mark Daley     | LHC Design                   |
| Mr Chris Williams | Advance Consulting Engineers |
| Mr Ben Garbett    | Keystone Law                 |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                   |  |
|-------------------|--|
| Mr Steven Stroud  | on behalf of South Hams District Council |
| Ms Joanna Lee     | Plymouth City Council                    |
| Mr Gareth Pinwell | Ashfords Solicitors                      |

### **INTERESTED PARTIES:**

|                    |                           |
|--------------------|---------------------------|
| Mr Lee Bonham      | Local Resident            |
| Cllr Philip Cole   | Kingsbridge Town Council  |
| Cllr Anne Balkwill | Kingsbridge Town Council  |
| Ms Julie Taylor    | Local Resident            |
| Cllr Judy Pearce   | South Hams Elected Member |

### **DOCUMENTS:**

|            |   |
|------------|---|
| Document 1 | Photographs submitted by Mrs Taylor                     |
| Document 2 | Examiner's report on the eNP and email relating thereto |
| Document 3 | A photograph of the site depicting recent land slippage |