



# Appeal Decision

Site visit made on 24 September 2024

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

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

**Decision date: 16 October 2024**

---

**Appeal Ref: APP/K1128/W/23/3333802**

**Land at Sx680402, Inner Hope to Outer Hope, Hope Cove, Devon TQ7 3HB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Bruce Brooker of BB Properties (Devon) Ltd against the decision of South Hams District Council.
  - The application Ref is 3847/22/FUL.
  - The development proposed is Erection of 6 semi-detached two bedroom affordable dwellings and 4 detached four bedroom houses with detached double garages, associated new highway access and service road, foul and rainwater drainage strategy, landscaping and habitat creation measures and detail.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. An unsigned and undated draft legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the draft s106 agreement) was submitted as part of the original planning application. This sets out draft provisions to secure the proposed dwellings for local people and to prevent their sale or occupation as second homes. I return to this later in my decision.

## Main Issues

3. The main issues are:
  - whether the appeal site is a suitable location for the proposed development, having regard to local and national policies for the delivery of housing;
  - whether the proposed development would provide a suitable housing mix;
  - the effect of the proposed development on the character and appearance of the area, including on the South Devon National Landscape and the Undeveloped and Heritage Coast;
  - the effect of the proposed development on highway safety, with particular regard to i) pedestrian access; ii) access to public transport; and iii) refuse collections;
  - the effect of the proposed development on protected and priority species and related habitats; and

- whether necessary obligations in respect of infrastructural impacts, the provision of affordable housing and restrictions in occupancy would be secured.

## Reasons

### *Suitable location*

4. The appeal site is a field, adjacent to the settlement of Hope Cove. This falls within the fourth tier of the Council's settlement hierarchy which relates to Smaller Villages, Hamlets and the Countryside, as set out in Policy TTV1 of the Plymouth and South West Devon Joint Local Plan 2014-2034 adopted 2019 (the JLP). It also lies outside of the settlement boundary as defined under Policy SH Env 1 of the South Huish Neighbourhood Plan 2020 (SHNP). The site therefore lies within the countryside for planning purposes.
5. Policy TTV26 seeks to protect the role and character of the countryside. The site is not isolated in terms of part 1 of the policy due to its proximity to the established settlement. The part 2 criteria of the policy are concerned with various matters, most relevant to this appeal is the avoidance of long term degradation of the landscape and natural environment. As I shall come on to later in my decision, the scheme would fail to protect the landscape and natural environment.
6. It is common ground between the parties that there is a need for affordable housing across the district. In view of this and the location of the site, the appellant has argued the proposal should be dealt with as a 'rural exception site' under Policy TTV27. Policy SH H3 of the SNHP supports the use of such sites, subject to compliance with national policy and Policy TTV27.
7. Policy TTV27 sets out the approach to meeting local housing needs in rural areas and allows proposals for residential development on sites adjoining or very near to an existing settlement where a number of criteria can be met. I consider each of these below.
8. The scheme proposes that 6 of the 10 dwellings to be provided would be affordable homes. According to the Council, the most recent recorded housing needs survey revealed a need for 7 new affordable homes. Whilst the entirety of the identified need for affordable housing would not be met, the appeal scheme would make a significant contribution to it. This would comply with the first criterion of the policy.
9. The policy sets out under criterion 2 that where market housing is provided to make the scheme financially viable, this should not represent more than 40% of the homes or 40% of the land take excluding infrastructure and services. Since the objective of the policy is to deliver affordable housing to meet a proven local need, any market housing would be permitted where it is necessary to make the scheme viable.
10. The proposal would provide 40% market housing. A viability assessment<sup>1</sup> was submitted which, the Council states, was subject to independent external review. This review concluded that, taking into account reasonable profits margins associated with this type of development as a rural exception site, the scheme could viably deliver alternative mixes that would deliver a greater

---

<sup>1</sup> Statement of Economic Viability, Land Asset Planning dated October 2021

number of affordable homes within the overall mix of units proposed. As argued by the Council, the corollary to this is that the scheme could have delivered the same number of affordable homes to meet the identified requirement, without the need for the proposed quantum of market homes to be delivered alongside. Accordingly, the amount of market housing proposed exceeds the amount necessary to make the scheme viable and to deliver the affordable homes.

11. The appellant has not countered this argument. In the absence of robust evidence to demonstrate that this level of market housing is justified to viably secure delivery of the affordable housing, I find that the scheme does not meet criterion 2 of the policy. Moreover, whilst I have not been provided with detailed figures, the layout plans indicate that the market housing would occupy a similar or, potentially greater, area of land than the affordable homes. This would also not comply with the requirement under criterion 2.
12. The appellant has stated that a Registered Provider has been sourced and would purchase and managed the affordable dwellings. However, whilst the draft s106 agreement makes some provisions in this regard, there are no details of the Registered Provider nor has the agreement been executed. There is therefore no mechanism to secure and manage the scheme to ensure that the dwellings continue to meet the identified need in perpetuity, as required under criterion 3 of the policy. This criterion is therefore not met.
13. The fourth criterion of the policy is that the proposal would need to meet the requirement of all other relevant policies of the plan. I consider other requirements of the plan in subsequent main issues. However, insofar as locational matters are concerned, the scheme does not meet those requirements.
14. I therefore conclude that the appeal site is not a suitable location for the proposed development, having regard to local and national policies for housing delivery. The provision of affordable housing does not justify a departure from this. It therefore conflicts with Policies TTV1, TTV26 and TTV27 of the JLP and Policies SH Env1 and SH H3 of the SHNP as referred to above. It also conflicts with Policies SPT1 and SPT2 of the JLP which together seek sustainable rural communities through development that supports the overall spatial strategy.

#### *Housing mix*

15. Policy DEV8 of the JLP relates to meeting housing needs within the Thriving Towns and Villages Policy Area in which the appeal site is located. This policy requires development to provide a mix of housing sizes, types and tenures appropriate to the area and as supported by local housing evidence. This includes 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.
16. The JLP Supplementary Planning Document 2020 (the SPD) identifies that there is an imbalance between existing housing stock and the projected size and needs of newly forming housing within South Hams and West Devon. There is a higher proportion of 4 or more bed homes within these areas relative to the rest of Devon and Cornwall, there are also issues around under-occupation and inherent unaffordability of such homes to those on lower

incomes, particularly within coastal settlements, resulting in the inability to create opportunities for home ownership.

17. According to the Council, local ONS<sup>2</sup> data indicates an imbalance in existing housing stock with significantly higher proportions of detached dwellings and dwellings of 3 bedrooms or more. Evidence to inform the SHNP included a housing needs survey which confirmed that there is a need for more reasonably priced 2 and 3-bedroom open market housing of mixed type and tenure and/or self-build plots.
18. The evidence does not indicate that there is a need for larger detached 4-bedroom open market dwellings. Such properties are likely to be more expensive to purchase on the open market and therefore, potentially out of reach for people earning local wages and salaries. Consequently, the provision of these would not widen opportunities for home ownership for local people or downsizing for people currently under-occupying their home. In addition, they would not redress the imbalance within the existing housing stock where the evidence points to the need for smaller houses.
19. I acknowledge that the affordable housing within the scheme would meet an identified local need for smaller starter homes which would contribute to housing for young families. However, this is just one aspect of the housing mix and does not make the proposal acceptable overall.
20. The market dwellings would be large and detached with separate garages and of a homogenous design. With no mix in the sizes or types of market dwellings being provided, they would appear entirely different from the much smaller, semi-detached affordable dwellings. Consequently, the affordable housing would be distinguishable from the other homes on the site and would fail to achieve the type of integrated development sought through Policy DEV10.
21. The proposal would not provide a suitable mix of housing. It would therefore conflict with Policies SPT2, DEV8 and DEV10 of the JLP which together seek a mix of housing supported by local housing evidence, that redresses an imbalance within the existing housing stock and for affordable housing to be indistinguishable from other homes on the site.

#### *Character and appearance*

22. Hope Cove lies within the South Devon National Landscape (previously called the South Devon Area of Outstanding Natural Beauty). Its special qualities include its wild and rugged coastline and unspoilt and expansive views. It is also located in the Undeveloped and Heritage Coast where the main objective, insofar as relevant to this appeal, is to conserve, protect and enhance the natural beauty of the coast.
23. The appeal site is an undeveloped pastoral field, located on the lower slopes of a valley on the edge of the settlement. The landscape here is characterised by gently sloping hills and a patchwork of fields separating adjacent settlements with views of the coastline beyond. Whilst adjacent to some limited development, the site is largely surrounded by open land and fields. In combination with these, it provides an open and rural landscape setting to the village of Hope Cove. It makes an important contribution to the physical and visual separation between the settlement and the adjacent village of

---

<sup>2</sup> Office for National Statistics

Galmpton, a short distance to the west. It also makes a positive contribution to the character of the National Landscape.

24. The introduction of 10 dwellings on the site, with associated new access from the road including the removal of a section of the boundary hedgerow, would fundamentally change the rural character of the site. The impact of this when viewed close to the site would be limited due to the sloping topography of the land and the presence of trees and hedgerows to the site's roadside, northern and southern boundaries. The development would nevertheless be visible through the newly created access although viewed in the context of nearby development. Moderate harm would arise from this.
25. The physical extent of the proposed development along the Hope Bypass towards Galmpton would only be marginally further along the road than existing development on the opposite side of the road. Travelling along this road, the physical and visual separation between the settlements would be largely unchanged.
26. In longer distant views from the south and the west, the intervening vegetation, topography and set back position of the existing development from the road, maintains a clear visual gap between the settlements. The development of the site would significantly reduce this. This would be particularly apparent from the elevated public viewpoints to the south and west, notably along the Hope Cove to Galmpton footpath on the ridge to the south of the site as well as from the Hope Grove bypass where it runs to the south and west.
27. From certain angles, because of the topography and position of existing development, the settlements would appear to merge. This urbanisation of the landscape and reduction in the visual gap between the settlements would cause considerable harm to the character and appearance of the settlements and their rural setting. It would also fail to conserve the landscape and scenic beauty of the National Landscape.
28. Due to its position on the far side of the settlement and away from the rugged coastline and beach, its impact upon the character, appearance and tranquillity of the Undeveloped and Heritage Coast would amount to a modest increase in activity within the settlement and a small reduction in the openness of views towards the coastline. The harm in this respect would therefore be moderate.
29. The appellant asserts that other developments of greater magnitude and impact have taken place, including within Hope Cove itself, that are clearly visible from the sea and surrounding, more distant receptors. Whilst this may be the case, this does not justify the proposal before me which I have found to be harmful for the reasons given.
30. I therefore conclude that the proposal would cause significant harm to the character and appearance of the area and the National Landscape and moderate harm to the Undeveloped and Heritage Coast. It would therefore conflict with Policies DEV10, DEV20, DEV23, DEV24, DEV25 and DEV28 of the JLP, Policies SH Env2, SH Env 5 and SH HBE3 of the SHNP and the Framework. Together these policies seek development that recognises the intrinsic character and beauty of the countryside, avoids a detrimental effect on the undeveloped and unspoilt character, appearance or tranquillity of the

Undeveloped Coast and requires development to conserve and enhance the natural beauty of the National Landscape.

*Highway safety*

31. A section of the existing boundary hedgerow and vegetation would be removed to create a new access onto the Hope Bypass. This is the main road providing access to the settlement and onto the wider road network. It is nevertheless a narrow rural road, with no streetlighting or footpaths.
  - i) *Pedestrian access*
32. Due to the narrowness of the road and the presence of the boundary hedgerow, there is no space to provide a separate footpath to serve the proposed development. Consequently, pedestrians accessing the site would have to walk along the carriageway of the highway which would be used as a shared space.
33. The characteristics of the road help to keep speeds low. Nevertheless, the evidenced 85<sup>th</sup> percentile speed along the road is around 30 miles per hour (mph). The Manual for Streets 2 explains that problems arise on shared space schemes where the 85<sup>th</sup> percentile speeds exceed 20mph. Thus, in combination with the absence of streetlighting, the proposal would not provide safe and suitable access for pedestrians from the proposed development.
34. The Hope Bypass is effectively a no-through route and traffic using it is likely to be local. The amount of traffic along the road will fluctuate throughout the year, with winter months, when it is darker, being quieter. At other times of year, the road will be used by tourists who are less familiar with the road and its conditions. At this time of year, when the weather is milder and daylight hours are longer, people are more likely to choose to walk from the site. This would increase the risk of conflict between pedestrians and other road users. Whilst it is submitted there have been no recorded accidents along this stretch of road, this does not make increasing the use of the shared space appropriate.
35. Alternative footpaths exist which are highlighted in the appellant's Transport Statement<sup>3</sup>. However, these are steep in places and a longer walk and therefore unlikely to provide a realistic alternative that pedestrians would wish to use on a day-to-day basis. They would also not be suitable for those with limited mobility or the blind or partially sighted.
36. I appreciate that there are limited footpaths and little streetlighting serving existing development in settlements within the District, including Hope Cove. I have also been made aware that new developments have taken place within these locations despite these factors. I recognise the appellant's frustration in respect of the apparent inconsistency. However, this does not make it appropriate to allow more development with substandard and unsafe pedestrian access.

*ii) Access to public transport*

37. The closest bus stop to the site is around 300m to the southwest on New Road. This is within an acceptable walking distance from the site. However, in

---

<sup>3</sup> Transport Statement, AWP 22 March 2021

view of my findings in respect of pedestrian access to the site, access to this bus stop would not be suitable. In these circumstances, the County Council's requirement for a suitably located bus stop to serve the proposed development is not unreasonable. The provision of such would require the main road to be widened to enable a bus to stop without obstructing the road. Other works, including resurfacing, gullies and a footway would also be required. No proposals have been put forward to address this concern.

*iii) Refuse collections*

38. The internal road within the development would not become public highway and the estate would remain private. It is not the policy of the County Council to enter private estates. Therefore, whilst it may be possible for a refuse vehicle to enter and exit the site in forward gear, the County Council requires satisfactory arrangements for kerbside collections. In certain circumstances, a planning condition could be used to secure such arrangements. However, confirmation in writing from the South Hams Refuse Department is required to demonstrate that entry into the site is possible. In the absence of this, there is insufficient information to conclude that a suitably worded condition could achieve the requirements.
39. The proposal would therefore need to provide kerbside collections. Due to the narrowness of the Hope Bypass there would be limited space to accommodate this and the stationary refuse lorries would cause inconvenience by blocking the road and potentially giving rise to conflict between road users.

*iv) Overall findings*

40. The proposal would provide unsatisfactory pedestrian access from the site either to the settlement or to public transport. Servicing arrangements for refuse collections would also be inadequate. Consequently, I find that the proposal would increase the risk of conflict between all road users which would be harmful to highway safety. It would therefore not accord with Policy DEV29 of the JLP and the Framework which together require development to provide safe and satisfactory traffic movement and high quality and safe facilities for walking and access to the site and not cause harm to highway safety.

*Protected species and habitats*

41. Paragraph 99 of Circular 06/2005 Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System advises that it is essential that the presence or otherwise of protected species and the extent to which they might be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations will not have been addressed on making the decision. Circular 06/2005 advises that the need to ensure that ecological surveys are carried out should only be left to conditions in exceptional circumstances.
42. An ecological appraisal dated June 2021<sup>4</sup> was submitted which identified a number of species and habitats present. The appellant acknowledges that this appraisal is now out-of-date but asserts that the author of the report has advised that there have been no significant change since it was submitted, thus it remains relevant.

---

<sup>4</sup> Extended Phase 1 Habitat Survey & Ecological Appraisal, Sunflower International Ecological Consultancy, June 2021

43. I have no substantive evidence that the survey information remains extant. No exceptional circumstances have been put to me to indicate that this matter should be left to a planning condition to resolve. Therefore, whilst I acknowledge that the scheme makes provisions for biodiversity enhancements and proposes habitats creation, there is no up-to-date information against which I can establish whether it would be effective.
44. Consequently, I cannot be satisfied that the scheme would not adversely impact upon protected species or habitats or that any proposed mitigation would sufficiently address this. Therefore, I conclude that the scheme conflicts with Policy DEV26 of the JLP and the Framework, which together require development to support the protection, conservation, enhancement and restoration of biodiversity and the avoidance of harmful impacts on protected species.

#### *Infrastructural impacts*

45. Various obligations are required to make the development acceptable in planning terms. In this case, the Council has identified a need to make contributions towards education provision and transport to mitigate the impacts of the proposal. It also required affordable housing to be secured as such and to ensure that the market dwellings could not be occupied as second or holiday homes.
46. The draft s106 does not make any provisions in respect of education or transport. It is also incomplete and not an executed deed. Therefore, there is no mechanism to secure the required obligations to make the development acceptable.
47. The appellant has indicated that it was open to the Council to amend or add to the submitted draft s106 as it saw fit. However, the burden is upon the appellant to provide an undertaking that secures all the obligations required to make the development acceptable. There is little evidence that this has been done.
48. The proposal would not therefore meet the required obligations to make the development acceptable in planning terms. As such, it would conflict with Policies DEV8 and DEV30 of the JLP and Policies SH H1 and SH H2 of the SHNP which together require developments of new homes to contribute to the delivery of sustainable communities and an appropriate range of infrastructure, for affordable housing to be secured and maintained in perpetuity and to ensure new open market housing is occupied as a principal residence.

#### **Other Matters**

49. The proposal would provide housing for 10 households which would enhance the use of existing local services, retail and catering throughout the year. The provision of 6 affordable housing units would help to meet a local need and is a positive factor in favour of the scheme. However, there is no mechanism to secure these and I can only attribute limited weight to this.
50. Access to the nearby services and facilities in Marlborough, Kingsbridge and beyond could be met through public transport. However, access to a bus service would not be satisfactory. Consequently, this carries limited weight in favour of the scheme.



51. An area of green space in the appellant's ownership is proposed to be planted to create a diverse habitat of trees, hedgerow and grasses. This area would be made accessible to the local population as recreation land. However, there is no mechanism to secure this. I attribute limited weight to this factor.
52. The scheme seeks to address the impacts of climate change and has proposed each dwelling be powered through renewable energy sources including solar panels and air source heating. These are positive aspects of the scheme which are supported through DEV32 of the JLP. However, they do not deliver anything that goes beyond what the policy is seeking. In addition, a flood risk assessment was submitted alongside a surface and ground water control and mitigation scheme and a foul drainage scheme. However, these were required to secure appropriate water management on the site. I give these factors limited weight.
53. The appellant submitted an incomplete s106 agreement which did not secure the required obligations. The Council considers that on this basis the appeal has no prospect of success and raised the question as to whether on that the basis the appeal has been reasonably made. It goes on to highlight the powers of the Inspector to initiate an award of costs in those circumstances but did not make an application for costs itself which it could have done.

### **Conclusion**

54. For the reasons given above, the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR