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## Appeal Decision

Inquiry held on 16 & 17 February 2016

Site visit made on 17 February 2016

**by Nick Fagan BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 March 2016**

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**Appeal Ref: APP/X1118/W/15/3021708**

**Land at Birch Road, Landkey, Barnstable, Devon EX32 0LB**

- 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 outline planning permission.
  - The appeal is made by Devonshire Homes & Mr N Tucker against North Devon District Council.
  - The application Ref 58730, is dated 14 January 2015.
  - The development proposed is for up to 77 residential dwellings, strategic and incidental open space (with all matters reserved).
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 77 residential dwellings, strategic and incidental open space (with all matters reserved) at land at Birch Road, Landkey, Barnstable, Devon EX32 0LB in accordance with the terms of the application, Ref 58730, dated 14 January 2015, subject to the conditions in the Schedule at the end of this decision.

### Procedural Matters

2. The original application was also for up to 250m<sup>2</sup> of employment floor space. The appellants, with the Council's agreement, sought to delete this aspect of the scheme and advertised this change in the development description in the local press. On the basis that there were no specific objections to this proposed change and because the substance of local peoples' objections to the original application nearly all related to the new dwellings, I have accepted this change to the proposal because it accords with the Wheatcroft principles<sup>1</sup>.
3. Although the Council failed to determine this application, a second identical application was made in May 2015 (Ref 59243). That was refused on 10 August 2015 for three reasons and the Council initially confirmed that it was defending this appeal on the basis of those three reasons.
4. The third of these related to the delivery of the original community and employment floor space. A Built Recreation Contribution would be delivered by the S106 Agreement or Unilateral Undertaking (UU1) provided to me at the Inquiry, and the Council confirmed that it was no longer seeking the employment floor space and therefore not contesting the third refusal reason.

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<sup>1</sup> As set out in the Procedural Guide: Planning Appeals – England, Annexe M

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5. The Council confirmed at the Inquiry, as did the representative from Devon County Council, that the appellants' other Unilateral Undertaking (UU2) made provision for a satisfactory financial contribution towards improvements of the main highway junction on the A361 providing access to Landkey village, and so it is not contesting the second refusal reason. I address the obligations in the Agreement and UUs below. The Council also made clear at the Inquiry that it was not contesting the proposal in terms of its residual traffic impact on the local highway network.
6. It also withdrew its case, such as it was, in relation to housing land supply. It accepts that because it cannot currently demonstrate a 5-year supply of deliverable housing sites, its relevant policies for the supply of housing are out-of-date as set out in paragraph 49 of the National Planning Policy Framework (NPPF). In this case that means 'saved' Policies ENV1 and HSG2 of the North Devon Local Plan (LP).

### **Main Issues**

7. Accordingly, the main issues are whether occupiers of the development would have safe and suitable access by sustainable modes of transport to key facilities and whether the proposal would comprise sustainable development.

### **Reasons**

#### *Access*

8. The development site is a 4.81 hectare greenfield site on the north-east side of Landkey village, currently in agricultural use. Although all matters are reserved including the details of the accesses, it is clear that vehicular access to the site would be taken from Birch Road, to which the Council has no objection in principle.
9. It is also intended to create three pedestrian (and possibly) cycle access points, as shown on the illustrative layout plan, one at the north-west corner of the site onto Acland Cross, one near the south-western corner of the site onto Ackand Road, and the other from near the south-east edge of the site onto the paved footpath on Millennium Green via a new stretch of footpath to be constructed and paid for by the developer.
10. Acland Road is unlit, has no footpath and is generally too narrow to allow two cars to pass each other. Whilst there is sufficient width for a car and pedestrian to pass each other pedestrians do not feel very secure walking along the central section of the road; this would particularly be the case for elderly people or parents with children. This central section is considerably sunken below the level of the site and a footpath/cycleway would require a fairly long stretch of ramp if it was to be useable by the occupiers of the development. I was provided with an illustrative 1:250 scale drawing of how a 1 in 20 gradient ramp could do this. Acland Road has a blind 45° degree bend about half way along its length. Owing to the steep slope of the land in this section and the constraints of land ownership, the ramp leading from the site would have to connect with the road at a point approximately 60-80m north of this blind bend.
11. Hence the proposed footpath/cycleway would discharge pedestrians and cyclists from the development fairly close to a blind bend where the land slopes up steeply towards the site. Acland Road also curves towards the north and

- due to its high banks and hedgerow the visibility of pedestrians and cyclists entering the road at this point for the drivers of cars travelling both north and south would be fairly poor. Likewise, the ability of pedestrians and cyclists to see cars approaching would also be poor.
12. That said, several mitigating factors should be acknowledged. The appellants' traffic surveys show that Acland Road is very lightly trafficked. The surveys were carried out in February 2014 and December 2015 and I acknowledge that there may be more traffic in the summer. But even assuming that it was 50% more and that a large proportion of the traffic from the proposed development was to use this road, it would still not be heavily trafficked.
  13. Acland Road is clearly used by pedestrians already and just south of the point at which the proposed path would meet the road there is a flat sliver of land, albeit in different ownership, which would allow pedestrians to step away from the road if they needed to in order to avoid a car. The traffic surveys also show that the 85<sup>th</sup> percentile speed is no more than 25mph, despite the 30mph speed limit. I was also able to observe, in my visits to the area, that drivers slowed down to speeds well under the speed limit as they approached the bends in the road, especially the blind bend, including when I was the only pedestrian on the road. This is not surprising given the road's physical constraints.
  14. Nonetheless, due to its narrowness, blind bend, generally curving alignment and steep sided enclosing banks Acland Road is not an ideal thoroughfare for either pedestrians or cyclists, especially at night due to its unlit nature. The appellants' argument that it is a 'shared space street' rather than a 'road' as defined in Manual for Streets 2 (MfS2) is rather fanciful in my opinion. This is because although there are houses on its west side, they are set back from the road at a higher level and do not therefore directly overlook it. The proposed houses would be located well above the road and even further set back from it. Hence the road's principal function is and would remain one of through movement of traffic rather than as a 'place' as defined by MfS2.
  15. For these reasons I conclude that Walking Route 2<sup>2</sup>, which uses Acland Road and is the shortest route between the site and the Post Office/convenience store and nearest bus stops, would not on balance provide safe and suitable access for pedestrians and cyclists.
  16. However, there are other routes which could and would be used. Cyclists from the site would be likely to use Birch Road if they were heading into Barnstable past the golf club, which would be the quickest and most direct route, and such a journey would take between about 15 and 30 minutes depending on the precise destination within the town. Although cyclists may well use Acland Road, they could also travel eastwards on Birch Road to link to Tanners Road and then Blakes Hill Road if they were cycling east towards Swimbridge.
  17. Walking Route 1 (WR1) would also use Birch Road. Whilst there is an 80m section of the road from Acland Cross to the commencement of the new footway in front of the Loring Fields development without a footway, this section of Birch Road is wide enough for two cars and pedestrians to pass at the same time and is straight with good visibility. There is enough room for

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<sup>2</sup> The suggested Walking Routes 1-5 are set out in Figure AJW-7.1 – Appendix 8 in Mr Wozniczko's Proof & in the Statement of Common Ground on Highways and Transport matters (SoCGHT)

- any pedestrians using this section of Birch Road to do so without significant risk of injury from passing vehicles. I appreciate that there was a road traffic accident in 2012 involving a pedestrian but this was on the narrower section of Birch Road to the east of the site and so is not directly comparable.
18. WR1 then passes through the new Loring Fields development and crosses Denes Road. It is only this small section of road that is unpaved before WR1 turns into Dene's Close and then follows the pavements on the suburban roads to the primary school in Bakers Way. This small section of road, even for children, would not be unduly hazardous because Denes Road is very narrow and parked cars mean that any oncoming traffic is forced to drive very slowly at this point. This would be the safest route to the bus stops near the school and would be a realistic alternative for pedestrians wishing to access the PO/convenience store if they were worried about safety on Acland Road.
  19. Walking Routes 3, 4 and 5 would all be through Millennium Green via the proposed new footpath connection. I heard at the Inquiry that the Millennium Trust, which manages the Green, had no objection to such a footpath link onto their existing paved footpath provided that there is no electric lighting and that the developer funded its construction and maintenance, which it has said it would do. WR3, which uses the footway at The Orchards, would be the closest walking route for residents of the south-eastern part of the site to the convenience store. WR4, which passes through the village car park, would be the closest route to the nearest bus stops next to the Castle Inn.
  20. The Council points out that the routes through Millennium Green are unlit, not overlooked by any dwellings and would be perceived as a security threat and therefore unlikely to be used very much. I acknowledge that this could be an issue during hours of darkness but fail to see why this would apply to daylight use. The Millennium Green appears to be well used by dog walkers even at this time of the year (i.e. winter) and as the main open space in the village I would expect it to be more intensively used in the summer, including by children using the play area near the Tanners Road entrance.
  21. The Council's main concern is essentially that whilst WR1 and WR3-5 are generally safer than WR2 (the Acland Road route), in that they mainly utilise footways, they would be considerably longer and therefore unlikely to be used in practice. In support of this claim the Council cites the MfS advice that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes walk, which equates to about 800m. Some of the facilities would be further away than this, as illustrated in Table 7.1 in the SoCGHT and in the Council's evidence. Indeed the school would be nearly twice as far using WR5.
  22. However, MfS also states that 800m is not an upper limit and that walking offers the greatest potential to replace short car trips, particularly those under 2km. Clearly, 800m is far more walkable than 2km for the majority of people. But Table 7.1 demonstrates that most of the village's facilities, including its bus stops giving access to the regular and frequent 155 service to Barnstable and Exeter, are within 1km of the majority of the site by all the five WRs. I walked them all and confirm that this realistically would not take more than 15 minutes for an averagely fit adult, which would be acceptable for most people.
  23. For these reasons I conclude that WRs 1 and 3-5 would constitute safe and suitable access for pedestrians and that the time taken to access the facilities

in the village would be unlikely to dissuade the majority of people from walking to them from the site and back again. These routes are therefore a suitable alternative to WR2, the shortest route to most village facilities using Acland Road, which is not a safe route. I therefore conclude that the site would have safe and suitable access by sustainable modes of transport to key facilities.

24. 'Saved' LP Policy TRA1A requires that a development proposal that will generate a significant amount of travel or have an impact on the local highway network will only be permitted if it will have good accessibility to a choice of transport modes including walking, cycling and public transport. For the above reasons I have concluded that the proposed development would have good or at least satisfactory access using sustainable modes of transport and the Council acknowledges that its residual traffic impact on the local highway network would be acceptable, subject to the obligations in UU2. It would therefore comply with this policy.
25. 'Saved' LP Policy TRA6 states that development will only be permitted where:-
  - a) provision is made for safe access onto and egress from the highway for all forms of travel serving the site;
  - b) the functioning of the road network or the safety of highway users is not harmed;
  - and c) the character and setting of the locality is not harmed by any highway works necessary to accommodate the level of traffic generated by the development.
26. In respect of a), the Council confirmed at the Inquiry that it has no concerns in principle about a vehicular access onto the site from Birch Road as per the illustrative plan, and I have concluded there would be safe access for walkers and cyclists. Regarding b), the Council acknowledges that its residual traffic impact on the local highway network would be acceptable, subject to the obligations in UU2. And in terms of c), the Council has raised no objections on these grounds. The proposal would therefore comply with Policy TRA6.
27. I accord little weight to Policies DMO4 and DM05 of the emerging Joint North Devon and Torridge Local Plan because of the limited stage it has reached in the adoption process, but the proposal would in any case comply with these emerging Policies, which essentially require the same things as the existing development plan policies.
28. For the same reasons as above, the proposal would also comply with the relevant parts of the NPPF in terms of safe and suitable access for all people and its residual cumulative impact on the highway network, in particular paragraphs 17 (penultimate bullet point), 32, 38 and 69.

### *Sustainability*

29. The site is on the edge of Landkey, a sizeable village with a range of facilities including a PO/convenience store, primary school, nursery, regular and frequent public bus service, pub, village hall and churches. Importantly it is no more than 3km to the edge of Barnstable and about 5km to Barnstable town centre with its extensive retail offer and full range of services that such a large town provides. Barnstable is a short bus or cycle ride from the site. I have concluded that access to the site would be satisfactory if not good including for those using sustainable transport modes and so the location of the site is inherently sustainable.

30. I have indicated above that paragraph 49 of the NPPF is invoked because the Council acknowledges that it cannot currently demonstrate a 5-year supply of deliverable housing sites. The fact that the site lies outside the village's development boundary and that the proposal would be contrary to LP Policies ENV1 and HSG2 carries limited weight because these policies are out-of-date.
31. NPPF paragraph 14 states that development proposals that accord with the development plan should be approved without delay and I have found that the proposal would accord with LP Policies TRA1A and TRA6. It also states that where relevant policies (in this case those in regard to housing supply) are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework as a whole.
32. The proposal would provide 77 new dwellings, of which 27 would be affordable (35% of the total). These are considerable social benefits in an area which has a pressing need for both market and affordable homes, and the construction of such units would also have a proportionate economic benefit. There are no environmental disbenefits. Such provision in an area of declared under-supply is a significant benefit in accordance with the NPPF, in particular paragraphs 6-8.
33. In conclusion, the proposed development would be located in a large village with a range of facilities accessible by sustainable transport modes and would provide much needed market and affordable homes in an area with an acknowledged under-supply of such dwellings. For these reasons it would be sustainable development.

### **S106 Agreement and Unilateral Undertakings**

34. There are two signed UUs and an Agreement signed by both main parties, all dated 17 February 2016. The Agreement and UU1 are similar. The difference between them is in respect of only two matters set out in Schedule 1 relating to affordable housing. First, the appellants argue that a tenure split of 50% social rent and 50% intermediate housing in the affordable units as set out in UU1 rather than the Council's normal requirement of a 75%:25% split would make the proposed development more viable and ensure the speedy delivery of the affordable units. However, I have seen no evidence to support the case that the scheme is not viable with the normal 50:50 split and so I favour the wording in the Agreement rather than that in UU1.
35. The other matter of dispute is that the appellants, also in Schedule 1 of UU1, want to allow the maximum equity in a shared ownership unit to be 100%, whereas the Council consider it should be restricted to 80% equity because this is a rural scheme. Whilst this dispute may well be academic in view of the likely provisions of the Housing and Planning Bill currently going through Parliament, I cannot see any justification for altering the Council's normal provisions in respect of such rural affordable housing.
36. Accordingly I favour the wording set out in the Agreement rather than UU1 in both these respects.
37. The Agreement obliges the appellants to provide 35% of the dwellings as affordable units with a 75%:25% split as detailed above in clusters of no more than 6-10 dwellings via a scheme to be agreed with the Council prior to

commencement of development and in accordance with customary agreed occupancy criteria. It also requires financial contributions towards outdoor recreation space (the football club and/or playing fields in Landkey) and built community floor space (such as a village hall, community café or business office); provision of allotments to be transferred to a suitable management company prior to first occupation of the market houses; and provision of on-site public space and a Multi Use Games Area (MUGA) prior to occupation of any of the dwellings.

38. The Council has confirmed that all these obligations are necessitated by, related and proportionate to the proposed development and that the financial contributions for each of the above matters would not exceed five individual contributions. I have no reason to doubt what the Council says. The obligations in the Agreement therefore comply with Regulations 122 and 123 of the *Community Infrastructure Levy Regulations 2010* (the CIL Regs).
39. UU2 obliges the appellants to address the County matters, namely those related to highways/transport and education in the area. In respect of the former it obliges them to pay a £200,000 contribution to the enhancement of the Route 155 bus service in phased instalments during the course of the development; fund the costs of traffic regulation orders (such as moving speed limit signs on Birch Road); agree in writing prior to occupation of any dwelling a Travel Plan designed to reduce the number of commuting trips by private car; and not to commence development until they have entered into a Section 278 agreement to ensure the provision of the road improvements to Birch Road and Acland Cross. In respect of education it obliges the appellants to pay a contribution of £429,391 towards education infrastructure, including £210,683 towards the expansion of Orchard Vale Primary School in Barnstable, the nearest primary school suitable for substantial expansion.
40. The County Council has confirmed that all these obligations are necessitated by, related and proportionate to the proposed development and that the financial contributions for each of the above matters would not exceed five individual contributions. I have no reason to doubt what the County Council says. The obligations in the Agreement therefore comply with Regulations 122 and 123 of the CIL Regs.

### **Conditions**

41. A revised agreed list of conditions to the one contained in the SoCG was given to me at the Inquiry. A number of these conditions including those related to the details of the estate roads and footpaths relate to the layout of the site, which is a reserved matter. It is not therefore necessary to include such conditions at this outline stage.
42. Conditions are however necessary for the following reasons:-
  - to make clear the extent of the site in order to provide certainty;
  - to ensure sound ecological mitigation and management of the site prior to first occupation of the dwellings in accordance with local and national policy;
  - to ensure satisfactory surface water drainage in order to prevent flooding prior to commencement;

- to prevent use of the site prior to the off-site highway improvements in Birch Road and at Acland Cross in the interests of road safety;
- to require a 15% reduction in regulated carbon emissions beyond current Building Regulations for the development in accordance with local policy and in the interests of sustainable construction;
- to ensure that the delivery of various parts of the development occurs in a phased way which does not prejudice highway safety or the living conditions of nearby residents;
- and approval of a Construction Management Plan prior to commencement in order to safeguard the living conditions of adjoining residents and in the interest of highway safety and convenience.

### **Conclusion**

43. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions below.

*Nick Fagan*

INSPECTOR

### Schedule of Conditions

1. The site hereby approved for development shall be as shown on the submitted location plan (131004 L01 02).
2. Details of the access, appearance, landscaping (including retained planting and other features), layout and scale (herein after called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development shall begin no later than 3 years from the date of this permission or not later than 2 years from the approval of the last "reserved matters" to be approved.
4. No dwelling to be occupied until an ecological mitigation and management plan has been submitted to and approved in writing by the Local Planning Authority. It shall provide for the management of the public open space to enhance the biodiversity interest. The development shall be carried out in accordance with the approved details.
5. The development hereby permitted shall not be commenced until such time as a surface water drainage scheme (including a full drainage masterplan and associated drainage calculations) has been submitted to, and approved in writing by, the Local Planning Authority (LPA). The scheme shall ensure that no surface water drains on to any County Highway. The scheme shall be fully implemented and subsequently maintained, in accordance with the



timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the LPA.

6. No part of the development hereby approved shall come into its intended use until the off-site highway works as shown indicatively on drawing no. PHL/004 revision A have been constructed and made available for use.
7. The development hereby approved shall not be carried out otherwise than in accordance with a phasing programme which shall previously have been submitted to and approved by the local planning authority in writing.
8. Within 3 months of the final dwelling being occupied a post construction report shall be submitted to the Local Planning Authority demonstrating that at least a further 15% reduction in regulated carbon emissions beyond current Building Regulations has been provided by either on-site renewable technologies or fabric efficiency measured against SAP (DER/TER).
9. Prior to commencement of any part of the site the Planning Authority shall have received and approved a Construction Management Plan (CMP) including:
  - a. the timetable of the works;
  - b. daily hours of construction;
  - c. any road closure;
  - d. hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning Authority in advance;
  - e. the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
  - f. the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
  - g. areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
  - h. hours during which no construction traffic will be present at the site;
  - i. the means of enclosure of the site during construction works;
  - j. details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
  - k. details of wheel washing facilities and obligations;
  - l. The proposed route of all construction traffic exceeding 7.5 tonnes;
  - m. Details of the amount and location of construction worker parking; and
  - n. Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

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*End of Conditions*

## **APPEARANCES**

### FOR THE APPELLANTS:

Anthony Crean QC                      Kings Chambers, Birmingham  
*instructed by* Neal Jillings

#### *Called:*

Alex Wozniczko  
CEng MICE MCIHT                      Awcock Ward Patnrnership

Neal Jillings  
BSc (Hons) MA MRTPI                      Jillings-Heynes Planning

### FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley                              Counsel, St Johns Chambers, Bristol  
*instructed by* the Solicitor of North Devon Council

#### *Called:*

Mark Baker  
BSc MICE CEng FCIT FCILT Eur Ing                      Mark Baker Consulting Ltd

Graham Townsend                              Planning Officer, North Devon Council  
MA DipTP

### INTERESTED PERSONS:

Mathew Collins                              Highways Officer, Devon County Council

David Luggar                                      District Ward Member & Local Resident

Glyn Lane    As above

Richard Prowse                                      Chair of Parish Council & Local Resident

Neil Hookway                                      Local Resident

Keith Woodyer                                      Local Resident

Ian Nunn    Local Resident

Suzanne Reed                                      Local Resident

Jonathan Reed                                      Local Resident

Rev Marilyn Tricker                                      Local Resident

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*End of Appearances List*

**DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Opening submissions on behalf of Appellants
2. Opening submissions on behalf of LPA
3. Agreed list of conditions
4. Illustrative accessible pedestrian link onto Acland Road from the site
5. Objection from Ian Nunn
6. Extract from Manual for Streets referred to by the Council
7. Drafts of S106 Agreement, UU1 and UU2
8. Signed and dated versions of S106 Agreement, UU1 and UU2
9. Costs of new grade separated junction on A361 supplied by Devon County Council
10. List of Core Documents
11. Closing submissions on behalf of appellants
12. Closing submissions on behalf of Council

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*End of Documents List*