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## Appeal Decision

Site visit made on 30 January 2019

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

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

**Decision date: 26 March 2019**

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**Appeal Ref: APP/K1128/W/18/3208541**

**Land to east of Lyte Lane, West Charleton, Kingsbridge TQ7 2BP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Messrs Rogers and Mrs Pike against the decision of South Hams District Council.
  - The application Ref 1193/17/OPA, dated 6 April 2017, was refused by notice dated 9 March 2018.
  - The development proposed is described as, outline application with some matters reserved for construction of up to 24 dwellings (including affordable housing), village green, children's play area, parking area, and associated works including landscaping.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application was made and determined in the name of Messrs Rogers and Mrs Pike, however some of the appeal submissions list the appellants as 'Messrs and Mrs Paul, Ben, Tim, Dan and Annabelle Rogers and Pike'. For sake of consistency and clarity I have used the format provided on the original application within both this decision, and those for related costs.
3. Applications for costs have been made by Messrs Rogers and Mrs Pike against South Hams District Council, and by South Hams District Council against Messrs Rogers and Mrs Pike. These applications are the subject of separate Decisions.
4. The application was made in outline with all matters reserved except access. Due the constraints on layout placed by the presence of a barrow, which is a scheduled ancient monument (SAM), and the comments of Historic England regarding this matter, I consider that there is likely to be limited scope for variation of the general layout and distribution of development shown on the submitted plans. The appellant has also placed strong emphasis on the strategic landscape scheme prepared in support of the development. As such, whilst I have necessarily treated the submitted plans, including those attached to the landscape and visual impact assessment (LVIA), as indicative in all regards except access, I have nonetheless placed considerable weight on the details relating to the layout and landscaping shown.
5. The description of development was changed during the course of the Council's determination of the planning application following a reduction in the number

of dwellings proposed. The change was agreed by the Council and is reflected in the description of development given above.

6. In February 2018 a revised version of the National Planning Policy Framework (the Framework) was published. The Council has submitted evidence during the appeal which anticipated the modifications made. The appellant has previously had the opportunity to comment on this evidence. I am therefore satisfied that re-consultation is not required in this instance, and that I can take the Framework as revised into account in making my decision without prejudice to any party.

### **Main Issues**

7. The main issues are:

- the effect of the development on the character and appearance of the area, including the landscape and scenic beauty of the South Devon Area of Outstanding Natural Beauty (the AONB);
- whether the proposal would constitute 'major development' in the AONB; and
- if constituting major development, do exceptional circumstances exist, and would the development be in the public interest

### **Reasons**

#### *Character and appearance*

8. The site is located within the AONB, within an attractive, rolling agricultural landscape, close to the Kingsbridge Estuary. The site principally consists of a large, roughly rectangular field on sloping ground. The western boundary of the site currently forms the eastern edge of the built-up area of the settlement, however further fields are located to the north, east and south. The setting of the site therefore predominantly consists of similarly open countryside, and it is within this context, rather than the context of adjacent housing development, that the site is currently viewed and perceived within the broader landscape.
9. The elevated nature of the site, combined with falling levels towards the Estuary, and an undulation in levels to the south, mean that it is highly exposed within both near and long views. A clear sequence of views is available from what appears to be a well-used public footpath running across fields to the south of the site and beyond. Approaching West Charleton along this path, the site is highly prominent, and indeed seen before the adjacent settlement comes into view. From this path the site's location beyond the built form of the settlement, a large proportion of which can otherwise be seen, is appreciable. Notwithstanding the recent construction of a hedge bank along the south boundary of the site, the site is also visible from the road running between West Charleton and East Charleton, particularly when travelling from the east. It is also notable that excellent views of the broad landscape panorama of the Estuary from higher ground to the northeast of the site pass directly over the site.
10. Visual exposure within each of the views would be most pronounced towards the top of the site. Here clear potential would exist for intrusion into the panoramic views of the Estuary. Approaching the development from the south

it is likely that built form would be visible from the road much sooner than it is at present, reducing the extent of separation between West Charleton and East Charleton. Overall visual impact would however be greatest upon views from the south, from which it would be possible to see the majority, if not the whole of the development, and from which the development would be viewed sooner and from a greater distance than the settlement is at present. In each view the presence of development would appear visually intrusive.

11. The fact that land to the north, east and south of the site would remain open would accentuate the visual intrusion caused, as too would the size of the site, and the loose distribution of buildings across it. The distribution would be heavily influenced by the SAM, as shown on the indicative layout. The inevitable visual association that would arise between the proposed development and existing housing to the west of the site, would further amplify the visual harm caused.
12. Some scope would exist to manage visibility within the context of the reserved matters of scale, appearance and landscaping. Buildings could be dug in to the slope as they are to the west of the site, building profiles could be kept low, and materials could provide camouflage. Planting could provide a degree of screening, as is envisaged by the LVIA. However, given the exposure of the site, its openness, and the openness of its immediate landscape setting, the effectiveness of these measures would be greatly limited. Indeed, whilst the scheme places a heavy reliance on landscaping, it is apparent that landscaping within, and forming part of the development would not integrate with its immediate setting, and would instead be primarily viewed as an aspect of the development itself. Limited potential therefore appears to exist within the scope of the reserved matters to limit the visually intrusive effect of the development.
13. Though I acknowledge that the site was a location considered for affordable housing by the Council in 2013, and some favourable comments regarding the landscape impact of development were made at the time, that was not subject of any formal designation or permission and so this has no direct bearing on my current assessment of the appropriateness of the development.
14. I have had regard to the purposes of the AONB, and in particular advice in paragraph 172 of the Framework, which states that great weight should be given to conserving and enhancing landscape and scenic beauty within such areas. Given my reasons above the visually intrusive nature of the development would fail to either conserve or enhance the AONB. I attach great weight to the harm that would be caused.
15. For the reasons outlined above I conclude that the development would have an unacceptably adverse effect on the character and appearance of the area, including the landscape and scenic beauty of the AONB. It would therefore conflict with Policies CS9 of the South Hams Local Development Framework Core Strategy 2006 (the CS) which states that development will not be permitted where it would damage the natural beauty, character or special quality of the AONB, Policy DP2 of the South Hams Local Development Framework Development Policies Development Plan Document 2010 (the DPD), which seeks to conserve landscape character, including by avoiding unsympathetic intrusion into the wider landscape; and part (e) of Policy DP1 of DPD, which seeks to secure development that enhances views. It would also

conflict with Policies Lan/P1 and Lan/P5 of the South Devon AONB Management Plan 2014-2019 which seek to conserve and enhance the landscape, and protect views. In its decision the Council also referenced Policies SPT11, DEV24, DEV27 within the emerging South West Devon Joint Local Plan 2014-2034 (the JLP), which is now at an advanced stage of preparation and so carries moderate weight. Insofar as each seeks to support the conservation of landscape and scenic beauty, the development would conflict with these emerging policies.

*Whether the proposal would constitute 'major development' in the AONB*

16. The Framework Glossary generally defines major development as development of 10 or more homes, or where the site has an area of 0.5 hectares or more. Therefore, had the development been proposed outside the AONB it would have been classified as major development on the basis of both the number of dwellings and the site area.
17. Within the AONB, footnote 55 of the Framework provides decision makers with some discretion in the definition of major development. Mindful of the great weight otherwise to be given to conservation and enhancement of AONBs I see no basis as to why this footnote should be considered to promote a definition of major development that was, as a matter of course, larger than outside the AONB. As such and given my finding that the development would have a significant adverse impact on the purposes for which the AONB has been designated, I see no reason to consider that the appeal proposal would constitute anything other than major development within the AONB.
18. The fact that 24 houses would represent a small percentage increase in the overall number of dwellings within West Charleton is of no particular significance. This is because it has little bearing on the negative impact that the development would have upon the landscape.
19. My attention has been drawn to appeal APP/K1128/W/16/3156062 within which the Inspector considered that a scheme of 32 houses would not constitute major development in the AONB, and another case in which the Council accepted that a development of 18 houses would not constitute major development in the AONB. Whilst both cases illustrate a differing approach to identification of major development, I note that the specific circumstances of each of these cases differed from that of the current appeal scheme. In particular the appeal scheme referenced was considered to have a minimal impact on the landscape. As such these cases have affected my assessment of the proposed development.
20. For the reasons outlined above I conclude that the proposed development would constitute major development in the AONB. Consequently paragraph 172 of the Framework states that planning permission should be refused except in exceptional circumstances, and where it can be demonstrated that the development is in the public interest.

*Do exceptional circumstances exist, and would the development be in the public interest?*

21. The provision of housing, including both affordable housing and open market housing is promoted as the principal public benefit that would be generated by the scheme.

22. The development would provide up to 8 affordable housing units based on a 33% split secured by a Unilateral Undertaking (UU). Whilst evidence relating to generalised affordable housing need has been provided, and reference is made to reported local need in 2012, no up-to-date evidence specifically relating to the current need for affordable housing in West Charleton has been placed before me. Therefore it is unclear to what extent and degree the development would service such need. The provision of up to 8 affordable dwellings would nonetheless be clearly beneficial, particularly in the apparent absence of any recent affordable housing development locally.
23. In assessing the scheme's provision of affordable housing requirements, the Council gave greater weight to compliance with emerging policies within the JLP than to conflict with the adopted development plan. Therefore, notwithstanding a failure of the scheme to provide the 50% affordable split of housing required by Policy CS6 of the CS, it would nonetheless provide a split that was compliant with Policy DEV8 of the JLP which sets a general 30% affordable housing requirement. Though Policy TTV (NEW2) of the JLP, drafted after determination of the planning application, sets a more stringent 40% affordable housing requirement in locations adjoining or very near to a settlement, the policy allows this calculation to be made on the basis of either numerical quantity or land-take. Therefore it could also be possible for the scheme to comply with land-take requirements depending upon its layout, which falls within the scope of the reserved matters.
24. Regardless of whether or not the development would meet the minimum requirements of emerging policy however, the Council argues that this would not be exceptional. Whilst the appellant has submitted a viability assessment to justify the proposed mix of dwellings, this appears to have discounted a higher proportion of affordable housing than that proposed principally on the basis of the land valuation. The latter does not appear to have been established on the basis of current advice set out within the Planning Practice Guidance which identifies existing use value as a starting point for valuation. I further note that the assessment was produced retrospectively and does not therefore demonstrate that maximisation of affordable housing provision was a driving force behind the scheme composition and design. As such I agree with the Council that the scheme would not be exceptional in its provision of affordable housing, and therefore that the level of affordable housing provision should not be treated as an exceptional circumstance. Consequently, whilst I acknowledge the significant benefit of affordable housing, I attach only moderate weight to its provision within the proposed scheme.
25. The Council's ability to demonstrate a 5-year supply of deliverable housing sites (5-year supply) is disputed between the parties, as too therefore the weight that should be attached to the scheme's general provision of housing. The appellant draws attention to the Council's Housing Position Statement 2015, which indicated that at that time the Council had a 1.9 year supply of deliverable sites, subsequent appeal decisions within which the Council accepted it could not demonstrate a 5-year supply, and the Council's officer report which states similar. Given the age of the 2015 position statement it does not and cannot provide any indication of the Council's current position. The appeals quoted simply confirm the situation at the time they were issued. The Council's finding within its officer report has itself been superseded by publication of the Plymouth, South Hams & West Devon Local Planning

Authorities' 2018, 5 Year Housing Land Supply Position Statement December 2018 (the PS) during the course of the appeal.

26. The PS makes clear that it is an interim statement pending adoption of the JLP. Whilst the PS draws upon material considered during examination of the JLP, it is not provisional upon the adoption of the JLP. Given that currently adopted strategic policies are more than 5 years old, the PS measures supply against the requirement generated by local housing need as set out in paragraph 73 of the Framework. This indicates that, based on the 2014 household projections and extant planning permissions, the Council's current 5-year supply is either 8.7 or 9.1 years depending upon whether figures for Dartmoor National Park are included. I note that as the PS anticipated changes to the Framework made in February 2019, its findings are unaffected by these changes. I furthermore note that the 191% housing delivery test (HDT) result for South Hams set out in the PS has been corroborated by figures published by the Government, confirming strong recent performance.
27. I note that the appellants reject the 2018 position statement, though provide little substantive basis for this. Whilst it might be the case that the facts upon which the PS is based were equally true at the point at which the Council determined the planning application, the PS was not available as a means of demonstrating the Council's 5-year supply at this time. The Council's finding in its officer report is not therefore evidence that the PS is invalid, but rather indicative of a precautionary approach taken by the Council in advance of publication of the PS. Indeed, I see no reason to question the validity of the PS.
28. Furthermore, even if I were to consider that there was a shortfall in 5-year supply, the 'tilted balance' set out in paragraph 11 of the Framework does not apply to the consideration of whether exceptional circumstances exist with regard to paragraph 172. In this context, whilst the provision of up to 24 dwellings on the site would serve a general need, and therefore provide a general public benefit, this would not in itself demonstrate the existence of exceptional circumstances. Consequently I give limited weight to the scheme's general provision of housing.
29. The Council acknowledges that West Charleton is highly constrained with regard to its position within the AONB, limiting the availability of potential housing development sites. Though neither party provides any detailed assessment of the scope to develop alternative sites around the village, the Council suggests that potential, albeit at presumably lower scale, exists in locations that would be less harmful. This appears to be reasonable.
30. The Council has also provided evidence for the recent approval of housing schemes within the District on sites outside the AONB, indicating that scope for such development exists within less sensitive locations. There is no particular reason to consider that the costs of developing in these locations would significantly differ from that of the appeal site. The appellant has not challenged the Council's evidence. As such there is no pressing need to develop the site for housing.
31. I have taken into account the fact that modifications to the JLP place greater weight upon protection of the AONB than the provision of housing in West Charleton. Indeed, the examining Inspectors have advised that West Charleton should be deleted from the list of 'sustainable villages' considered capable of

- accommodating 10 dwellings, reflecting the weight given to conservation and enhancement of AONBs within paragraph 172 of the Framework. As such the trajectory of emerging policy appears to be set against the development.
32. Some economic benefits would inevitably be generated by the development. These would be generated during construction, but principally arise once the development was occupied, at which point residents could provide additional support for existing local services. However, there is no evidence to show that the development is necessary to provide support for existing services, or therefore that there would any adverse consequences to them in its absence.
33. The appellant considers that public access to the SAM, together with provision of an interpretation board secured by the UU should be counted as a public benefit. Whilst I do not question the archaeological significance of the SAM, it is apparent that the barrow has been ploughed almost flat and is very difficult to see. Public access and an interpretation board secured by the UU may therefore be of far more limited educational benefit than if the barrow was more intact and visible. The provision of interpretative material should itself be more appropriately viewed as mitigation required to balance the harm that development within the immediate setting of the barrow would cause. This indeed appears to have been the basis upon which Historic England has considered the impact acceptable. As such, the scheme would not deliver any significant heritage benefits to weigh against the harm that the development would otherwise cause.
34. The development would provide a public open space including an informal play area, secured by the UU. Whilst some need for the space and play area would be generated by the development itself, the space itself would be almost wholly a product of the requirement to maintain a spatial/visual connection between the SAM and related sites. Furthermore, though the appellant indicates that the space and play area could be used by the broader community, I note that the land slopes and the space would occupy a peripheral position in relation to the settlement at large. Each would severely limit potential uses of the space and its accessibility. On account of the above I attach very little weight to the public benefit that would be provided by the open space and play area.
35. In view of the fact that the site is, for the most part, a large field planted with grass, I have no doubt that some ecological enhancement could be achieved simply by provision of more varied planting within the scheme. Ecological enhancements could however equally be achieved within the context of the site in its current use. In this context, I note that a hedge has been recently planted along the road bordering the south edge of the site. There would be nothing to stop further hedges being planted, or improved management of existing hedges around the site taking place. As such development is not necessary to deliver ecological enhancement of the site. Consequently, the potential for the development to deliver ecological enhancement is a matter to which I attach very little weight.
36. The UU provides a commitment to fund a footpath. The Council however appears to indicate that this contribution is not required, and that the objective it seeks to deliver cannot be achieved. Such a contribution would not therefore meet the test set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and cannot therefore be considered a benefit.

37. Education contributions are provided for within a second Unilateral Undertaking. Though the appellant claims these as a benefit of the scheme, they have been requested to mitigate the additional demands that would be placed on the education system, and to address lack of safe access between the site and the village school. As such these contributions cannot be considered to provide a 'benefit' of the scheme. Therefore, whilst I have no reason to consider that these contributions would not be compliant with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), such contributions do not attract any weight in favour of the scheme's approval.
38. For the reasons outlined above I conclude that whilst the provision of affordable housing and market housing would each provide some public benefits, including to the economy, no exceptional circumstances exist which would outweigh the harm that would be caused to the AONB. As such the development would not be in the public interest. Consequently paragraph 172 of the Framework indicates that planning permission should be refused.

### **Conclusion**

39. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, I find that in this case material considerations, including support from the Parish Council, do not indicate that my decision should be made other than in accordance with the development plan. For the reasons set out above, and having regard to all other matters raised, I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR