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# Appeal Decision

Site visit made on 5 October 2017

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 30 October 2017**

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**Appeal Ref: APP/R3325/W/17/3176111**

**Land Adjacent to Mertoch Leat, Water Street, Martock TA12 6LD**

- 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 Blue Spruce Properties Ltd against the decision of South Somerset District Council.
  - The application Ref 16/04699/OUT, dated 16 November 2016, was refused by notice dated 27 March 2017.
  - The development proposed is an outline planning application for the erection of 12 No dwellings (incorporating details of access) and associated works including drainage infrastructure and highway works.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have used the date of the planning application from the ownership certificates rather than the earlier declaration date on the planning application form. I have also taken the address of the site from the planning application forms which accurately describe the location. It is not clear why the Council altered this on its decision notice.
3. The application was originally submitted for 23 dwellings but was reduced to 12. Given that this was the basis upon which the Council made its decision, I have also considered the proposal in that way and have used the description of the proposal from the decision rather than planning application forms.
4. The proposal is made in outline form with access being the only detail at this time with all other matters being reserved for future consideration.

## Background and Main Issues

5. The Council agrees that at present they cannot demonstrate a 5 year supply of deliverable housing sites. Accordingly, paragraph 49 of the National Planning Policy Framework (the Framework) states that the relevant policies for the supply of housing should not be considered up to date. In these circumstances, the fourth bullet point of paragraph 14 of the Framework makes clear that the presumption in favour of sustainable development means granting permission for the proposed development, unless any adverse impacts significantly and demonstrably outweigh its benefits or specific policies in the Framework indicate development should be restricted.

6. In view of this, the main issues in this appeal are whether any specific policies in the Framework indicate that the proposed development should be restricted or whether any adverse impacts of the proposal would significantly and demonstrably outweigh its benefits, having particular regard to the suitability of the site for housing with regard to:
- The effects upon biodiversity;
  - The effect of the proposal on the character and appearance of the area with particular regard to the setting of the Martock Conservation Area (CA) and whether the setting of listed buildings would be preserved; and
  - The effect on living conditions at neighbouring properties with reference to outlook and additional activity.

## Reasons

### *Biodiversity*

7. The Council's refusal did not raise concerns over the effects of the proposal upon habitats of or directly to protected species. Planning conditions related to this matter have been suggested. However, the preliminary ecological report indicates that further survey work is required, some of which relates to reptiles (slow worms and grass snakes) that were translocated here from the adjoining development site and also badgers.
8. Circular 06/2005<sup>1</sup> states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it *"...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"* (paragraph 99). The circular advises surveys should only be required by condition in exceptional circumstances. Furthermore, where surveys have been conducted and the presence of protected species has been confirmed, it is the responsibility of the developer to include proposals for appropriate mitigation measures in their evidence.
9. Broad elements of mitigation for reptiles have been provided. However further survey work is required to determine the abundance of such species and also to agree a plan and method for mitigation. Additionally, the matter of whether there are badgers' setts on site in addition to the sett just outside of the site, as well as the latrines and foraging holes within and adjoining the site, is not clear. This also requires further survey work and therefore potentially details of mitigation. The presence and extent of these protected species on the site has not been clearly established and necessary measures to protect them have not been specified. I do not consider that I can impose a condition to require further survey work as there are no apparent exceptional circumstances that would justify that approach.
10. Some mitigation has been recommended within the preliminary ecology report in relation to other species which would involve the retention of hedges,

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<sup>1</sup> Department for Communities and Local Government, Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

drainage ditches, foraging and commuting habitat. The supplementary tree planting and a landscape buffer would also assist. Some biodiversity interests would be enhanced. However, these factors do not overcome or outweigh my concerns in relation to this main issue, that significant harm to biodiversity resulting from the development may not be avoided or adequately mitigated for as required by paragraph 118 of the Framework. This is a specific policy within the Framework that indicates that development should be restricted.

### *Character and appearance*

11. This part of Martock is partially a linear settlement with traditional and modern buildings, set out alongside the road known as Hurst. However, to the north of the settlement there are roads running off of the main central routes of Church Street and Water Street with a greater mix of uses. There are Modern developments such as that at Matfurlong Close to the north and adjoining the site. A residential development is under construction, to the north east. The buildings on the eastern side of Hurst have gardens adjoining the western boundary of the site which coincides with the boundary of the CA. The appeal site is an area of undeveloped land previously been used as an orchard.
12. The boundary around the site includes many trees growing out of the hedges providing a soft edge to the CA. When viewing from Hurst, some of the substantial trees growing up from the hedges are noticeable from the road, between the buildings. Those are significant for the general setting of the CA. Some trees would be removed as a result of the development. These are within the site and generally are of little significance or amenity value outside of it or therefore to the character and appearance of the CA. A large common ash of higher amenity value is proposed for removal but it is well within the site and its loss would not have a harmful impact upon the setting of the CA.
13. The site would remain well screened from adjoining dwellings and the nearby park particularly with the proposed additional planting and retention of a substantial landscape buffer. The density of hedge and tree cover around the boundary of the appeal provides a clear definition along the western side to the CA. The existing openness within the site has a limited effect upon the setting of the CA given the degree of enclosure by trees and hedges.
14. The proposed development would be at a density allowing substantial rear gardens where the site adjoins the properties to the west. The detailed consideration of design including the position, size and bulk of the proposed dwellings would determine the degree that any dwellings would be noticeable from nearby rear gardens within the CA, from Hurst or when looking towards the CA from the park and new dwellings currently under construction. The modern development at Matfurlong Close has a similar relationship to the CA as is proposed and I consider that it has respected the local context. In my view, a development of 12 dwellings could be designed whilst ensuring that the setting of the CA is not harmed. The site is also substantially separate from the Listed Buildings of Orchard House and the nursing home at Hurst Manor with the substantial tree cover again preventing harmful impacts upon them.
15. The proposal would have an acceptable effect upon the character and appearance of the area which would preserve the setting of the CA and nearby Listed Buildings, safeguarding those heritage assets. This would comply with

policies EQ2 and EQ3 of the South Somerset Local Plan<sup>2</sup>. It is unnecessary to undertake the balance set out within paragraph 134 of the Framework.

### *Living conditions*

16. A good amount of space between the rear gardens of neighbouring dwellings and the nearest proposed properties could be retained. The proposal would not bring about any additional sense of enclosure for neighbouring residents. The dwellings and additional activity on the land may be noticeable from nearby properties. However this would not have an unreasonable impact upon the outlook from those dwellings or their gardens. The low intensity of the proposed development would not significantly harm the tranquillity of the area. Residential amenity of neighbouring properties would be suitably protected. In relation to this main issue, the proposal would not have a harmful effect on living conditions at neighbouring properties. This would comply with LP Policy EQ2 and the requirement in paragraph 17 of the Framework to secure a good standard of amenity for all existing and future occupants of land and buildings.

### **Other Matters**

17. My finding that significant harm to biodiversity resulting from the development may not be adequately avoided or mitigated for as required by paragraph 118 of the Framework means that this is a case where a specific policy in the NPPF, at paragraph 134, indicates that development should be restricted. Even though relevant policies for the supply of housing cannot be considered up-to-date, that does not in itself weigh in favour of granting planning permission. Some concern has been expressed including from the Parish Council regarding an oversupply of housing. That is based upon the LP allocations and policies that are out of date. Furthermore, the Framework seeks to boost significantly the supply of housing and does not require maxima. I attach no harm in this regard to the proposal which would be a benefit, boosting the housing supply as required by the Framework and which would include affordable dwellings.
18. The proposed access that would be through the adjoining estate currently under construction. I have no evidence that traffic generation or the highway layout within the village would cause highway safety problems within the settlement. Drainage concerns have been raised although the proposal would require new drainage infrastructure to be installed and there is no evidence that this could not adequately serve the development.
19. Counterpart planning obligations under the provisions of S106 of the planning act have been submitted which would secure affordable housing as well as various financial contributions. Given that I am dismissing the appeal for other reasons, it has not been necessary for me to consider this in any further detail.

### **Conclusion**

20. The other matters and my conclusions on 2 of the main issues do not outweigh my conclusion on the first main issue. The appeal should be dismissed.

*Andy Harwood*

INSPECTOR

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<sup>2</sup> South Somerset Local Plan (2006-2028), adopted March 2015