The Planning Inspectorate

Appeal Decisions

Site visit made on 20 December 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal A Ref: APP/X1118/W/22/3300437
Plot 3, The Stables, Saunton Road, Braunton EX33 1HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Grove Caravans Ltd against the decision of North Devon District Council.
- The application Ref 74667, was dated 16 January 2022.
- The development proposed is one new residential dwelling in field.

Appeal B Ref: APP/X1118/W/22/3300526
Plot 4, The Stables, Saunton Road, Braunton EX33 1HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Grove Caravans Ltd against the decision of North Devon District Council.
- The application Ref 74668, was dated 17 January 2022.
- The development proposed is provision of 1 residential dwelling.

Appeal C Ref: APP/X1118/W/22/3300528
Plot 5, The Stables, Saunton Road, Braunton EX33 1HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Grove Caravans Ltd against the decision of North Devon District Council.
- The application Ref 74675, was dated 18 January 2022.
- The development proposed is provision of 1 residential dwelling.

Appeal D Ref: APP/X1118/W/22/3309682
The Stables, Saunton Road, Braunton EX33 1HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Grove Caravans Ltd against the decision of North Devon District Council.
- The application Ref 75662, was dated 25 July 2022.
- The development proposed is erection of new dwelling and access track.

Decisions

1. Appeal A is dismissed and planning permission for one new residential dwelling in field is refused.

2. Appeal B is dismissed and planning permission for provision of 1 residential dwelling is refused.
3. Appeal C is dismissed and planning permission for provision of 1 residential dwelling is refused.
4. Appeal D is dismissed and planning permission for erection of new dwelling and access track is refused.

Applications for costs

5. Applications for costs were made by the Appellant against the Council. One application relates to Appeals A, B and C and the separate costs application refers to Appeal D. These applications are the subject of separate Decisions.

Procedural Matters

6. Appeals A, B and C relate to 3 plots, numbered Plot 3, 4 and 5. There are extant permissions[1] for two dwellings on adjoining land also in the Appellant's ownership (Plots 1 and 2), hence the numbering.
7. All of the Appeals were submitted against the failure of the Council to determine the applications within the prescribed timescales. Despite the jurisdiction for making a decision not being with the Council at said time, decision notices for Appeals A, B and C were issued shortly following the receipt of the Appeals. The reasons for refusal listed on the notices have formed the main issues for consideration.
8. Appeal D is an alternative scheme for Plot 4 as proposed under Appeal B and shows minor revisions to the plot layout. As part of Appeal D, a revised site plan was submitted which detailed the locations of parking, waste storage areas and indicative positions of garages, but also largely relocating Plot 5 further away from Plot 4. As this plan showed the house outside of the defined red line site area for Plot 5 (under Appeal C), I cannot take it into consideration. Similarly, this amended plan appears to show an alternative house type for Plot 3 that would allow greater distance between it and Plot 4, albeit that the house type plans for such have never been submitted. As such, I have disregarded this plan insofar as it relates to Plots 3 and 5 and consider each of the Appeals on the basis of the plans originally submitted therewith.

Main Issues

9. The main issues in each of the Appeals are:
    - whether the location of development accords with local policies which direct new housing towards settlements within defined settlement boundaries to minimise reliance on private vehicles and protect the character of the countryside; and
    - whether an appropriate provision of affordable housing and other community infrastructure would be secured by way of a planning obligation;
    - the effects of the proposal on the wider character and appearance of the area;

[1] Under references 72392 and 73542

- whether the proposal would constitute good design and whether through such it would afford satisfactory living environments to future occupiers in terms of privacy and outdoor amenity space;
- whether the highway estate road and infrastructure would be suitable to serve the development; and
- whether a suitable drainage scheme would serve the development.

Reasons

Location of development

10. The application sites all lie within a generally level field on the southern side of Saunton Road in close proximity to some dwellings, live/work units and holiday units also owned by the Appellant. The built up area of Braunton lies to the northern side of Saunton Road.

11. The North Devon and Torridge Local Plan (2018) (Local Plan) sets out that Braunton is a Main Centre which is to receive a large proportion of growth over the plan period and also provides support for development within the development boundaries as defined on the Policies Map. Policy BRA provides for housing allocations for the south-eastern side of Braunton totalling around 420 dwellings, though the appeal site is not allocated under the same. As the site is not allocated for housing development and falls outside of the defined settlement boundary, it lies within the countryside in planning policy terms.

12. Local Plan Policy ST07 states that in the countryside, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. None of the Appeals would involve the reuse of an existing building or have any reason for being restricted to a countryside location. Whilst the dwellings or any one of them considered individually would give rise to social and economic benefits of a commensurate scale, there is nothing to suggest that they are proposed to meet a specific need in their given location.

13. For the above reasons, the location of the developments under Appeals A, B, C and D conflict with, in particular, Local Plan Policies ST01, ST06, BRA and ST08 which seek to direct new housing towards settlements within defined settlement boundaries to minimise reliance on private vehicles and protect the character of the countryside.

Affordable Housing

14. Policy ST18 of the Local Plan sets out that affordable housing provision will be required from residential development proposals, in situations where (a) the proposal provides for 11 or more dwellings or greater than 1,000 sqm of floorspace, then 30% affordable housing is required, or (b) where designated rural areas[2], proposals for 6 to 10 dwellings will be required to provide a financial contribution equivalent to 30% affordable housing.

15. The entire area of Braunton falls within a designated rural area where limb (b) applies. Though, when taken together, even with the extant permissions for two single dwellings, the total number of dwellings on this planning unit would

[2] As designated under Section 157 of the Housing Act 1985

be 5. The Council refers to '*Practice Note 1 - Policy ST18: Affordable Housing on Development Sites'* (2019) which sought to set aside the thresholds in ST18 in favour of those specified in the National Planning Policy Framework (the Framework) (2018 version) which for both major developments and minor developments within designated rural areas, required a provision of on site or off-site financial contribution in lieu of affordable housing where a site exceeds 0.5 hectares in size.

16. The 2018 version of the Framework has been superseded by the 2019 and now the current 2021 version. The 0.5 hectare site threshold no longer exists and thus, Practice Note 1 no longer reflects national policy. The Framework currently says that: "*Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer)".*

17. Whilst the Council's statement suggests that the site exceeds 0.5 hectares, there is little evidence of this, or of any intention to circumvent the Policy trigger of six or more dwellings. For these reasons, I attribute greater weight to the adopted Policy threshold than that detailed in Practice Note 1.

18. As such, the proposals, taken in isolation or cumulatively, do not trigger Local Plan Policy ST18 or conflict with the requirements of the same.

Character and Appearance

19. From my site visit, it is clear that the built up area of Braunton lies to the north side of Saunton Road. That has an undisputable urban character and a predominance of single storey dwellings in the immediate vicinity of the site. To the south, the area falls within the Adopted Heritage Coast and Heritage Zone, and is largely agricultural, green and open in character.

20. There is a cluster of buildings around Moor Lane, south of the sites and in the vicinity of 'Broadlands Farm' and 'Great Field Lodges', which are generally laid out informally in a low density arrangement. Most of these buildings appear to be single storey or low modern buildings with asymmetric roof forms and timber-clad exteriors of one type or another. They are not particularly visible or prominent in views from Saunton Road which helps to maintain the area's openness and rural character.

21. The two already-permitted dwellings (of either 1.5 or 2 storey in height) will introduce a character change to the area by extending an urban influence westwards and in closer proximity to Saunton Road. Given their heights, it is inevitable that the upper parts of these dwellings will be publicly visible and only partly softened through the retention of hedgerows and additional landscaping.

22. The proposals, when taken in combination with each other and with the consented dwellings, would consolidate the urbanisation of the site/s through the regular two storey heights, form and appearance of the dwellings, their density and the relationship they would have with one another. This intensification of development would markedly change the area to one with an urbanised character which would be highly visible from Saunton Road.

23. If any proposal were taken individually, as an addition to the two consented dwellings, it would have a lesser effect in this regard. However, for reasons more related to design and layout as set out below, there would be visual harm from the way in which any combination of buildings would relate poorly to one another, with resultant harmful character and visual effects.

24. Therefore, for the reasons set out, the proposals under Appeals A, B, C and D, would harm the character and appearance of the area and would thus conflict with Local Plan Policies DM04, DM08A and ST04. These Policies seek to ensure development is of an appropriate scale, mass and design that recognises and respects landscape character of both designated and undesignated landscapes and their key characteristics and special qualities.

Design and Living Environment

25. All dwellings proposed would have three bedrooms and would be of a consistent two storey height with matching plan form and elevations. Each would have a monopitch roof, a 'conservatory' projection at ground level and would be a combination of painted render lowers with modest areas of stonework and timber clad uppers. Windows would be a mixture of narrow vertical units, smaller, squarer units and high-level small units. Overall, the dwellings would have a contemporary appearance. Whilst the footprint of garages appear shown on one of the layout plans, no such plans have been submitted for such and consequently, I have not considered them as part of the proposal.

26. From the plans, it appears that each of the dwellings would be orientated in the same way within its respective plot. The plans may be misleading in this regard as the permitted plans for Plots 1 and 2, whilst shown as matching Plots 3, 4 and 5, may not be strictly as shown. Nevertheless, when taken together, the replication of the house types, laid out as shown, would lend to a poor form of design. Plot 2 would become almost entirely surrounded by an inefficient road layout and would need to be at least partly enclosed with high boundaries to give its much-reduced garden area any degree of privacy. Some dwellings would address the estate road well, some would not, some would afford reasonable outlooks to future occupiers, whereas some would appear too close to boundary features, parking areas or neighbouring dwellings to provide a good standard of privacy and outlook. Similar issues would arise with garden sizes relative to the generously-sized detached dwellings proposed.

27. Whilst the house design is unobjectionable in and of itself, when applied on a 'one size fits all' basis it would result in a formulaic and poorly-conceived outcome. Furthermore, when the schemes are taken together, the layout of the dwellings within their plots would appear cramped and 'blocky', failing to achieve the best possible quality of living environment for future occupiers of the dwellings. Though I note that there may be some aspiration for future purchasers to develop their own design solution for each plot, the detailed nature of the schemes does not allow such flexible interpretation of the plans and a holistic approach to the wider site infrastructure and sub-division of its parts would still help to achieve well-designed scheme.

28. For the reasons set out, the proposals would not constitute good design or afford quality living environments to future occupiers, thereby conflicting with, in particular, Policy DM04 of the Local Plan. This Policy seeks to ensure

development is appropriate and sympathetic in terms of scale, density, massing, height, layout and appearance etc. and also seeks to safeguard the amenities of existing and future neighbouring occupiers.

Highways Aspects

29. I note that the Appellant has sought to overcome previous objections of the Highway Authority in relation to the highway layout and potential adoptability of such in the latest revision of the layout plan. Notwithstanding the other issues identified therewith, the latest revision of the layout appears to show that each of the plots could provide two parking spaces, electric vehicle parking and access to a turning head to meet the expectations of Local Plan Policies DM05 and DM06, with aspects of this nature capable of being secured by way of planning conditions.

30. In any event, this is not a decisive matter in respect of these Appeals.

Drainage

31. I note that a limited amount of information has been submitted to support the proposed means of surface water drainage, such as any calculations for the system relative to the site's greenfield run off rate, to ensure that it is appropriately designed in the context of Local Plan Policies ST03 and DM02. Whilst the finer details could be secured by planning condition, given that there is a small part of the site which is prone to surface water flooding and close to areas at greater risk of the same, it would be prudent as part of a more holistic approach to the planning of the site to ensure that it can accommodate all of the development proposed, including the necessary drainage infrastructure.

32. However, this is not a decisive matter in these Appeals.

Other Matters

Whether Self-Build

33. The Appellant's evidence refers to the dwellings being proposed as self-builds which may be adapted under future planning applications to suit the requirements of the plot purchasers. However, all Appeals seek detailed planning permission for a fixed house type, which are broadly consistent in scale, layout and appearance. There is little evidence that these designs have been influenced by the intended future occupiers.

34. The Framework glossary sets out that self-build and custom-build housing is that built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. It also points to the legal definition set out in the Self-build and Custom Housebuilding Act 2015 (as amended), which further elaborates that self-build housing is not "*the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person*".

35. In this case, there is no evidence of a group of individuals collaborating to submit the applications as all are submitted by the same appellant. The house types are similar and the detailed permission sought would only enable each house to be built in accordance with those plans. There is no planning obligation/s to secure the dwellings as self-build dwellings either, which to be

taken into consideration should be before me as part of the Appeals. Therefore, despite the appellant's stated intentions, his experience of building other houses and reference to other appeal decisions[3] which differ from the Appeals before me, the proposals can only be taken as open market dwellings to be built to the submitted specifications.

36. In summary, the dwellings do not fall to be considered as self-build dwellings and no weight can be attributed to this aspect of the schemes.

Five Year Housing Land Supply

37. The parties are in agreement that, at the present time, the Council is incapable of demonstrating a five year supply of housing land against the nationally-set requirement in the National Planning Policy Framework (the Framework). The degree of shortfall has not been detailed by either party.

38. In cases where there is an absence of a five year housing land supply (5YHLS), Paragraph 11 of the Framework is engaged. This sets out that where the most important policies for determining the application are out-of-date, i.e. in this case where there is an absence of a 5YHLS, permission should be granted unless: (i) specific Framework policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or (ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.

39. In this case, due to the acknowledged shortfall in housing land, the policies relevant to the supply of housing, namely ST06, ST07 and BRA, are deemed to be out of date for the purposes of the Appeals. There are no specific Framework policies under Paragraph 11(d)(i) that provide a clear reason for refusing the development proposed. Therefore, the ordinary 'tilted balance' under Framework paragraph 11(d)(ii) applies.

40. There is a degree of difficulty weighing the benefits of the scheme given that neither party has clarified the extent of the housing land shortfall and the schemes provide for either one dwelling or a range of up to three if taken together. However, even a single dwelling or three dwellings can make a small but valuable contribution, irrespective of the size of the shortfall.

Protected Sites

41. All residential development within the zone of influence of the Braunton Burrows Special Area of Conservation is considered to have an adverse impact through increased recreational use, considered individually or cumulatively with other similar developments. This is accepted by the Appellant and financial contributions to offset such impacts appear to have been secured through agreements under Section 111 of the Local Government Act 1972. If I were to allow the Appeals, such effects and the level and surety of any mitigation would need to be considered through an Appropriate Assessment under the Conservation of Habitats and Species Regulations (2017, as amended).

[3] Appeal Refs: APP/W0530/W/19/3230103, APP/G2435/W/18/3214451 and APP/X1118/W/15/3003545

Planning Balance and Conclusions

42. For the reasons set out above, when taken together, the Appeals would give rise to a poorly-designed scheme in and of itself, and, for related reasons, would harm the character and appearance of the area. These harms, added to the locational conflict with the spatial strategy of the same, mean that the Appeals would conflict with the development plan when taken as a whole.

43. As set out above, the tilted balance applies in respect of these Appeals. The benefits of the schemes would be the addition of the houses to the local housing stock where they would be well-related to Braunton and its respective facilities. There would be economic benefits through both the construction phase, albeit of a more time-limited nature, and beyond, through the economic activity of future residents. I attribute these benefits modest favourable weight, commensurate with any one of the Appeals taken as an individual dwelling or the combination of all three together.

44. In weighing these considerations, I find that the totality of adverse impacts would significantly and demonstrably outweigh the benefits. Thus, the tilted balance set out in the Framework does not form a consideration of such materiality that suggests that a decision should be taken other than in accordance with the development plan. There are no other considerations so overriding that they are capable of influencing such an outcome either.

45. Consequently, for the foregoing reasons, Appeals A, B, C and D are dismissed.

Hollie Nicholls

INSPECTOR

The Planning Inspectorate

Costs Decisions

Site visit made on 20 December 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Costs application in relation to Appeal A Ref: APP/X1118/W/22/3300437 Plot 3, The Stables, Saunton Road, Braunton EX33 1HG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Grove Caravans Ltd for a full award of costs against North Devon District Council.
- The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for one new residential dwelling in field.

Costs application in relation to Appeal B Ref: APP/X1118/W/22/3300526 Plot 4, The Stables, Saunton Road, Braunton EX33 1HG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Grove Caravans Ltd for a full award of costs against North Devon District Council.
- The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for provision of 1 residential dwelling.

Costs application in relation to Appeal C Ref: APP/X1118/W/22/3300528 Plot 5, The Stables, Saunton Road, Braunton EX33 1HG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Grove Caravans Ltd for a full award of costs against North Devon District Council.
- The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for provision of 1 residential dwelling

Costs application in relation to Appeal D Ref: APP/X1118/W/22/3309682 The Stables, Saunton Road, Braunton EX33 1HG

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Grove Caravans Ltd for a full award of costs against North Devon District Council.
- The appeal was against the refusal of failure of the Council to issue a notice of their decision within the prescribed period on an application for erection of new dwelling and access track.

Decisions

1. The applications for costs for Appeals A, B and C are refused.

2. The application for costs for Appeal D is refused.

Reasons

3. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Appeals A, B and C

4. The Applicant alleges that in each case, the Council did not engage with him constructively or proactively or reach its decision within a timely manner, i.e. within the statutory 8 week period. The Applicant also asserts that the lack of communication left him without a solution but to submit appeals against the Council's non-determinations. A further criticism levelled at the Council is the failure to factor in relevant considerations in the overall planning balancing exercise, such as the absence of a five year housing land supply and the claimed self-build benefits of the schemes.

5. The Council's rebuttal details the lengthy exchanges of emails between its officers and the Applicant and suggest that these undermine the claimed lack of communication. There is also a suggestion that though the Council did engage with the Applicant, it did not see any need to prolong discussions that it ultimately considered incapable of addressing the numerous and fundamental issues raised.

6. As far as can be deduced from the evidence, consistent with the Applicant's account of events, the first substantive communications from the Council appear to have been more than three months after the initial validation of the applications. Issues were apparently raised at this point. Then, following a change in personnel, a more consistent two-way dialogue appears to have taken place, but with a quick escalation towards an encouragement of the Applicant to withdraw the schemes or face imminent refusals, which appears harsh given the limited communication in the preceding months and apparent lack of clarity as to the reasons why. Overall, the slowness to process the applications and the approaches thereafter are suggestive of some areas for improvement on the part of the Council.

7. That said, there is some doubt in my mind about whether the appeal applications have been made in the most logical way, in relation to one another, or so as to achieve their stated intentions. Many of the alleged benefits of the schemes are laudable, but how they would be delivered is less clear and the expectation of assistance to address all such matters is rather onerous. A more considered approach may have simplified the processes and paved the way for a more constructive dialogue.

8. I do note the Applicant's agreement to remedy any issues and secure any proffered benefits appropriately, but the appeal process is unfortunately not so flexible as to afford such open-ended opportunities.

9. Considered in the round, I do not find that the appeals were unnecessary or that different outcomes would have been achieved had appropriate weight been attributed to aspects such as the absence of a five year housing land supply, as

has been set out in my decisions. Furthermore, since the appeals have been submitted, the Council has largely met the expectations of the process.

Appeal D

10. The Appeal D application was submitted on the 25 July 2022, and the appeal was received on the 25 October 2022. The Applicant suggests that the Council did not discuss this application with him at all during the months that it was being processed, let alone in a constructive or proactive manner. The point is also made in connection with this application that the Council did not issue a decision within the statutory 8 week period.

11. The Council would have been aware of Appeals A, B and C at the time of receipt of the Appeal D application. Nevertheless, the lack of communication and a decision by the Council within the statutory time period is still difficult to understand. There is a degree of overlap of the sites and similarities between the schemes, but more timely communications and/or a decision could have been made to minimise the Applicant's uncertainty and need to pursue another non-determination appeal.

12. For reasons also set out in the decision, I do not consider that Appeal D was unnecessary, given the views held by the respective parties, and the Council has not prevented or delayed development which should have otherwise been permitted, having regard to the relevant policies and other material considerations.

Conclusions

13. For the foregoing reasons, despite that there are some areas where an improved level of service should have been expected, I do not consider that the Council has deliberately behaved unreasonably, either substantively or procedurally in these cases. Therefore, wasted expense, as described in the PPG, has not been demonstrated and awards of costs are not justified.

Hollie Nicholls

INSPECTOR