

PLANNING APPLICATION REPORT

Case Officer: Matt Jones

Parish: Tavistock **Ward:** Tavistock South West

Application No: 2789/17/VAR

Agent/Applicant:

Rogers & Jones Architects
17 Gordon Terrace
Mutley
Plymouth
PL4 6EP

Applicant:

Westward Housing Group Ltd
Template House
Newton Abbot
Devon
TQ12 4PH

Site Address: Land Adjacent To Brook Farm, Brook Lane, Tavistock, Devon

Development: Variation of condition 4 (approved plans) of planning consent APP/Q1153/W/15/3131710 (00233/2015) for 23no. dwellings with associated access road, parking and external works

Reason item is being put before Committee

Cllr Parker has requested that the application be determined by Planning and Licensing Committee *'for the reason that it proposes a fundamental amendment to the Secretary of State's decision without advancing any good planning justification for such a change.'*



Recommendation: That delegated authority be given to the CoP Lead in consultation with the Chairman of the Committee to approve the application subject to the conditions listed below and the prior satisfactory completion of a Section 106 Agreement Deed of Variation

However, in the event that the Section 106 legal agreement remains unsigned six months after this resolution, that the application is reviewed by the COP Lead, in consultation with the Chairman of the Committee, and if no progress is being made delegated authority is given to the CoP Lead to refuse the application in the absence of an agreed S106 Agreement

Conditions

Details of Reserved Matters prior to commencement
Time limit for submission of Reserved Matters
Time limit for commencement of development
Accord with Plans
CEMP prior to commencement
Contamination assessment prior to commencement

Key issues for consideration:

The main issues are the requested changes to the accord with plans condition and the implications for the development.

Site Description:

The application site abuts the southern edge of Tavistock's Settlement Boundary. About ½km up Brook Lane to the north are three large supermarkets as well as various employment units in local industrial estates. There is a bus stop within Morrison's car park and a bus stop just north of the roundabout providing access to other bus routes, which is no more than 750m away from the site. The site is within easy and generally safe walking distance of more than one primary school and the secondary school and a National Cycle Route crosses Brook Lane and the River Tavy near Morrisons.

In 2016 the Planning Inspectorate upheld an appeal for Outline Consent for *'23 No dwelling units comprising 8 affordable/local needs units and 15 No open market units with associated access road, parking and external works.'* The site is now to be allocated for the residential development of 23 unit within the emerging Joint Local Plan.

The Proposal:

This application seeks the amendment of the Accord with Plans condition, condition 4. The existing condition 4 reads as follows:

'The development hereby permitted shall be carried out in accordance with the following approved drawings: 1319 [PL-]01D & 1319 [PL-]02.'

The covering letter states that this submission is motivated by a requirement for the layout plan and site section, approved at outline, to be removed from the condition as they restrict the applicant and lead them unable to fully address reserved matters at the reserved matters stage. In effect, although layout is a reserved matter, at this time any change to the approved layout within the reserved matters submission would be in breach of that condition.

Officers also note that the Inspector did also not approve a Site Location Plan within the Accord with Plans condition, and this is an opportunity to ensure that that is included in any varied approval.

Consultations:

- County Highways Authority

No objection

- Tavistock Town Council

Neutral view – ‘*do not feel competent to revoke an Inspector’s Condition*’

Representations:

16 letters of objection have been received at the time of writing this report, Concerns raised are summarised as follows:

- The Inspector found it necessary to condition the submitted plans
- It is not in the interests of good planning for the condition to be reworded
- The conditions should remain as set by the Inspector
- Less housing would be more appropriate for the site
- There are drainage issues associated with the site and development
- Highways infrastructure is unsuitable to accommodate the development

A number of the representations refer to an email sent by Cllr Parker to the case officer, and, in the interests of transparency, this email has been disclosed to the Council website.

Relevant Planning History

00233/2015 - Outline planning application for the development of 23 dwellings comprising of 15 open market and 8 affordable/local needs units with associated access road, parking and external works – Refused by Planning and Licensing Committee against officer recommendation, appeal upheld by the Planning Inspectorate

Analysis

This scheme was fully assessed by the Planning Inspectorate in relation to the upheld appeal, and officers maintain the position adopted by the Inspectorate with regard to matters of planning policy and all other material planning considerations. This Section 73 application has been submitted not to challenge planning judgment, but to resolve procedural matters regarding the drafting of the Accord with Plans condition.

Regardless of the fact that the condition was set by a Planning Inspector representing the Secretary of State, the Local Planning Authority is duty bound to assess this application pursuant to Section 73 of the Town and Country Planning Act, and therefore to critically examine the appropriateness of the Inspector’s conditions. Paragraph 206 of the National Planning Policy Framework states “Planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.”

The policy requirement above is referred to in this guidance as the 6 tests

The existing condition 4 reads as follows:

'The development hereby permitted shall be carried out in accordance with the following approved drawings: 1319 [PL-]01D & 1319 [PL-]02.'

The drawings referred to are a layout plan and a site section. Officers regard this to be an unorthodox condition for two reasons. Firstly, the condition approves a detailed layout plan although layout is a reserved matter. Secondly, the condition omits to approve a Site Location Plan, meaning that the site is arguably, as yet, legally undefined.

Approving the layout plan technically leads any future applicant unable to amend the layout in any material way despite layout being a matter due for approval at the Reserved Matters stage.

It is the opinion of officers that the information submitted was enough to allow the Inspector to conclude, in principle, that the scheme was acceptable, but, that it was not essential for the layout plan to have been formally referenced within the accord with plans condition. Had the layout plan not been included, the Local Planning Authority would have retained absolute control over any layout subsequently submitted, with the knowledge that it had been demonstrated, in principle, that 23 units could fit on the site in a policy compliant manner. If issues are raised regarding a different layout at Reserved Matters, the Council would be in a legitimate position, if so minded, to seek reversion to the layout plan as submitted at Outline stage.

That it was included within the condition was therefore not necessary in planning terms and was unreasonable as it now prevents amendment to reserved matters of the scheme at the Reserved Matters stage. The layout plan demonstrates that a scheme can work, in principle, regardless of whether or not it is within the accord with plans condition, and it doesn't need to be there; the Local Planning Authority retains control over the layout regardless.

The condition therefore fails the tests of necessity and reasonableness and should be amended to remove reference to the layout plan.

Similarly the submitted section indicates that the dwellings are to be two storey, and, when concluding that that scale of development was acceptable within the site, the Inspector did not need to include the site section within the accord with plans condition. For the same reasons as above, reference of the site section is also recommended to be removed from the planning condition. It is noted that the Inspector appears to have considered the section as indicative of the general scale of the development, stating that it *'is sufficient to indicate that these dwellings will be two storeys in height and shows the relative heights of these particular houses in relation to surrounding dwellings. However, further details will be required of the heights of all the other new dwellings at reserved matters stage as well.'*

The second issue is the omission of a Site Location Plan from the decision, which is most unorthodox. This application also offers the Council the opportunity for the site to be defined by a Site Location Plan.

Officers therefore recommend that the condition is amended to read:

- 4) 'The development hereby permitted shall be carried out in accordance with the Site Location Plan

All other conditions are retained but references to the previously approved plans are removed. The Council maintains control over the detailed assessment of the scheme including matters of access, appearance, landscaping, layout, and scale and the relationship between the proposed dwellings and the neighbouring properties surrounding the site.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004

Planning Policy

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.

The relevant development plan policies are set out below:

West Devon Borough Council Core Strategy 2011

SP1 – Sustainable Development
SP5 – Spatial Strategy
SP6 – Density of Housing Development
SP7 – Strategic Distribution of Housing
SP8 – Inclusive Communities
SP9 – Meeting Housing Needs
SP13 – Community Services and Facilities
SP14 – Accessibility Planning
SP17 – Landscape Character
SP18 – The Heritage and Historical Character of West Devon
SP19 – Biodiversity
SP20 – Promoting High Quality Design
SP21 – Flooding
SP23 – Tavistock
SP24 – Sustainable Rural Communities

West Devon Borough Council Local Plan Review 2005 (as amended 2011)

NE10 – Protection of the Countryside and Other Open Spaces
BE13 – Landscaping and Boundary Treatment
H31 – Residential Development in the Countryside
T1 – Walking and Cycling
T2 – Pedestrian and Cyclist Safety
T8 – Car Parking
T9 – The Highway Network
PS2 – Sustainable Urban Drainage Systems
PS3 – Sewage Disposal

Emerging Joint Local Plan

The Plymouth and South West Devon Joint Local Plan (the JLP) will replace the above as the statutory development plan once it is formally adopted.

Annex 1 of the National Planning Policy Framework (the Framework) provides guidance on determining the weight in relation to existing and emerging development plan policies.

- For current development plan documents, due weight should be given to relevant policies according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- For the JLP, which is an emerging development plan, the weight is to be determined by the stage of its preparation, the extent to which there are unresolved objections, and its degree of consistency with the Framework.

The JLP is at a relatively advanced stage of preparation. The precise weight to be given to policies within the JLP will need to be determined on a case by case basis, having regard to all of the material considerations as set out on the analysis above.

PLYMOUTH AND SOUTH WEST DEVON JOINT LOCAL PLAN -: PUBLICATION (as considered by the Full Councils end Feb/Early March 2017)

SPT2 Sustainable linked neighbourhoods and sustainable rural communities

SPT3 Provision for new homes

TTV24 Other sites allocations in Tavistock

DEV20 Place shaping and the quality of the built environment

DEV22 Development affecting the historic environment

DEV23 Cornwall and West Devon Mining Landscape World Heritage Site

DEV24 Landscape character

DEV27 Nationally protected landscapes

DEV28 Protecting and enhancing biodiversity and geological conservation

DEV29 Green and play spaces

DEV30 Trees, woodlands and hedgerows

DEV37 Managing flood risk and Water Quality Impacts

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

Planning Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale of the new dwellings (hereinafter 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.

Reason: To ensure that adequate information is available for the proper consideration of the detailed proposals and to protect the appearance and character of the area.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from 14 September 2015

Reason: To comply with Section 92 of the Town and Country Planning Act, 1990 (as amended).

- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with Section 92 of the Town and Country Planning Act, 1990 (as amended).

- 4) The development hereby permitted shall be carried out in accordance with the Site Location Plan

Reason: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

- 5) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development
- iv) programme of works (including measures for traffic management)
- v) wheel washing facilities
- vi) measures to control the emission of dust and dirt during construction
- vii) a scheme for recycling/disposing of waste resulting from construction works

Reason: To mitigate, so far as reasonable, the impact of the construction phase on highways infrastructure, neighbour amenity, and the local environment

- 6) Prior to commencement of development the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved in writing by the Local Planning Authority, to include the following elements:

- 1) A preliminary risk assessment/desk study identifying all previous uses, a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation scheme based on (1) above to provide information for an assessment of the risk to all receptors that may be affected, including those off site.
- 3) The site investigation results and the detailed risk assessment (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 7) Prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met. It shall also include, where relevant, a long term monitoring and maintenance plan for monitoring of pollution linkages, maintenance and arrangements for contingency action and for the reporting of this to the Local Planning Authority.
- 8) Prior to the commencement of each phase, details of how fibre optic broadband connections to at least "superfast" (greater than 24MgBps) shall be facilitated to ensure that all Internet Service providers (ISPs) are able to deliver their services to all premises within the development shall have been provided to and approved in writing by the Local Planning Authority. Such infrastructure as identified within these approved details shall be provided in phase with the development.
- 9) At least 10% of energy used in the development shall be generated from decentralised and renewable or low carbon sources.

Reason: The condition covers the full range of measures that may be needed depending on the level of risk at the site. If the LPA is satisfied with the information submitted with the application they can decide to delete any of elements 1 to 2 no longer required. The LPA may still decide to use the whole condition as this would allow them to declare the information no longer satisfactory and require more or better quality information if any problems are encountered in future.