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## Appeal Decision

Hearing held on 5 February 2014

Site visit made on 5 February 2014

**by Keith Manning BSc (Hons) BTP MRTPI**

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

**Decision date: 6 March 2014**

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**Appeal Ref: APP/P1133/A/13/2209715**

**Lemonford Caravan Park, Bickington, Newton Abbot, Devon TQ12 6JR**

- 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 Thackard Ltd against the decision of Teignbridge District Council.
  - The application Ref 13/01996/MAJ, dated 4 July 2013, was refused by notice dated 3 October 2013.
  - The development proposed is development of up to 25 dwellings.
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### Procedural Matters

1. The application is in outline with all matters reserved for subsequent approval.
2. A Unilateral Undertaking dated 20 January 2014 was submitted at the Hearing. This provides that no less than 40% of the dwellings shall be affordable housing and provides for financial contributions in respect of education and open space. The Council agreed at the Hearing that the undertaking would effectively resolve the corresponding three reasons for refusal.
3. A rudimentary Statement of Common Ground of limited utility was submitted.
4. A short adjournment was allowed at the Hearing in order that the appellant could consider whether an adjournment to another day, so as to allow the company to adduce site specific written evidence in respect of the availability of each of a number of sites identified in the Council's housing land supply, published on the Council's website from 8 January 2014, should be sought. However, the appellant decided not to seek such an adjournment.

### Decision

5. The appeal is dismissed.

### Application for costs

6. At the Hearing an application for costs was made by Teignbridge District Council against Thackard Ltd. This application is the subject of a separate Decision.

### Main Issues

7. The main issues are as follows:-
  - Whether the Council has an adequate supply of housing land;

- Whether the proposed development is in a sustainable location;
- The effect of the proposed development on biodiversity with particular reference to the Greater Horseshoe Bat, its strategic flyways and the South Hams Special Area of Conservation; and
- Whether the proposed development would unacceptably increase or suffer from flood risk.

## Reasons

### *Background to relevant policy considerations*

8. The appeal site is on land sloping down towards the River Lemon which is forms part of an extensive holiday caravan and camping site with a management office and reception area which also retails a limited range of convenience goods for users of the site and, I was informed, visiting members of the public. It is close to but outside the boundary of the Dartmoor National Park. It lies a little to the west of a small cluster of dwellings, the smaller of the two areas enclosed by the settlement limit for Bickington defined in the Teignbridge Local Plan ('the adopted local plan'). The November 2012 submission of the Teignbridge Local Plan 2013-2033 ('the submitted local plan') does not propose to alter the settlement limit for Bickington, albeit the possibility for doing so is left open in the event that a neighbourhood plan were to be prepared.<sup>1</sup> The River Lemon effectively separates the site from this cluster of dwellings, both physically and visually, the latter by virtue of its tree-lined banks. Single dwellings and small groupings of dwellings are dispersed within the countryside in the general vicinity of Bickington and the caravan park outside the formally defined settlement limit. For policy purposes, the appeal site also is within the countryside, albeit the Council raises no objection to the proposal in terms of its potential impact on the character and appearance of the rural landscape.
9. The submitted local plan, which includes land allocations for housing, has been subject to public examination and the Inspector's suggested modifications do not significantly affect the allocations or the housing land trajectory, the strong inference being that the emerging local plan may be considered sound in that respect. It is at an advanced stage in the statutory process and, having being examined in the context of the National planning Policy Framework ('the Framework'), may be accorded due weight in line with the principles set out in paragraph 216 thereof. In the circumstances and bearing in mind the apparent soundness of the document as regards housing land supply matters, I accord it very significant weight in that respect. Pending adoption, the starting point for consideration of the appeal proposal remains the adopted local plan, which is plainly time-expired for such purposes, as it covers the period 1989-2001.
10. Nevertheless it is plainly too simplistic to assert that paragraph 14 of the Framework and the presumption in favour of sustainable development therein is necessarily engaged because it is an application for housing and paragraph 49 of the Framework makes it clear that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites. In this case, notwithstanding the expiry of the adopted local plan, the weight accruing to the

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<sup>1</sup> Submitted local plan paragraph 2.51

emerging local plan is such that it does constitute relevant policy and would fail to be up-to-date only if there was a failure in demonstrating a five year supply of deliverable housing sites, a matter to which I return.

11. In this overall context there is a raft of relevant policy including; H7 of the adopted local plan, which generally resists residential development in the countryside; S1A of the submitted local plan, which reflects the presumption in favour of sustainable development articulated in the Framework; S1 of the submitted local plan which addresses many facets of sustainability including accessibility for main travel purposes and to necessary services, and biodiversity; and policy S22 of the submitted local plan which, complementary to policy S21 concerning the location of limited new development in villages, resists development in the open countryside outside defined settlement limits other than for defined purposes, including tourism. This is consistent with Framework intentions that rural areas should be allowed to prosper but that the countryside should nevertheless be protected for its intrinsic character and beauty and from the development of isolated new homes without appropriate justification. Policy S22 includes an intention to pay particular attention to the integrity of biodiversity networks.
12. The Framework seeks to minimise impacts on biodiversity, reflecting the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures. Policy C17 of the adopted local plan and policy EN10 of the submitted local plan generally reflect this intention and more specifically highlight the importance of European designations including Special Areas of Conservation, the relevant SAC in this case being the South Hams SAC, a grouping of designated locations spread across South Devon but interconnected by a network of strategic flyways for the rare Greater Horseshoe Bat, a species for which the area is important in that it represents habitat for around one third of the UK population, I was told. Natural England's evidence base and planning guidance ('the relevant guidance') on the topic<sup>2</sup> is a material consideration of significant weight.
13. The Framework (and associated technical guidance) sets out national policy and guidance on flood risk including the sequential approach and exception test for more vulnerable forms of development including dwellinghouses. Policy EN4 of the submitted local plan addresses this matter and is broadly reflective of the approach.

#### *Housing land supply*

14. Notwithstanding acknowledged past failures to demonstrate adequate housing land supply, the Council presents credible evidence that a combination of advanced preparation of its emerging local plan, within which (now, for practical purposes, certain) allocations are anticipated to be taken up in the near future, and grants of planning permission including on a number of such allocations have served to transform the picture to the extent that, not only can the Council identify the necessary five year supply, but it can also cater for the 20% buffer necessitated by persistent failure to deliver in the past. This is in the context of a housing land trajectory in the submitted local plan which sharply accelerates delivery now to address such failures in order that, from 2016 until 2033, a consistent delivery rate of 640 dwellings per year is

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<sup>2</sup> Doc 3

provided to maintain an average of 620 per annum over the plan period as a whole. According to emerging policy S4 of the submitted local plan, 90% of the housing will be located in the 6 higher order settlements listed, including 50% in the area described as 'Heart of Teignbridge'.

15. Annex 3 to the Council's statement is the *Teignbridge Housing Land Supply Statement* published on its website from the date of issue (8 January 2014). The statement demonstrates, taking into account the requisite 20% buffer, a 6.3 year supply including a windfall allowance and a 5.9 year supply in the absence of such an allowance.
16. Although the appellant queried certain of the assumptions underlying the rate of delivery in the context of market realities on particular sites I was presented with no hard evidence pertaining to specific sites and the opportunity to do so was not taken up, as I have previously noted. I am also conscious that in calculating the five year land supply, the Council has accepted and deployed the build-out model recommended by the SHLAA Panel<sup>3</sup> supplanted by site-specific information from developers where available. While I acknowledge that there is scope for applying judgement to this variable in respect of particular sites, and that the appellant's judgement may vary from that made by or available to the Council, I have, in the circumstances, no reason to fundamentally question the Council's contention that it has now, for the time being at least, resolved its housing land supply difficulties for the purposes of applying Framework policy and policy S1A of the submitted local plan. The supply picture is clearly set in the context of an emerging development plan that is considered to be sound in terms of its approach to housing land delivery and there is currently a margin in the supply picture that, bearing in mind the consultative approach used by the Council, is unlikely to be so eroded by over-optimistic assumptions that it would be wholly negated.
17. In all the circumstances, I am able to conclude for the purposes of the appeal that the Council's does have an adequate supply of deliverable housing sites. This is in contradistinction from my colleague's conclusion, as recently as October last year, that the Council's housing land supply was inadequate. However, in that appeal<sup>4</sup> the Council had conceded that, at that time, it was unable to demonstrate a five year supply whereas the intelligence now available regarding the effectiveness of the submitted local plan, the effect of various permissions granted, including on appeal, and the subsequent reappraisal of the situation has led to a very different picture, as outlined in the Council's email to the appellant's agent of 6 January 2014.<sup>5</sup>

#### *Sustainability of location*

18. Bickington is clearly a village cited in the adopted and submitted local plans as a defined settlement within the wider countryside, the latter confirming close access to a limited range of facilities and daily public transport services. Whereas the emphasis of policy H7 of the adopted local plan is on prevention of development in the countryside outside the defined settlement limits, that of policy S22 of the submitted local plan is on the management of development and investment to provide attractive, accessible and biodiverse landscapes, sustainable settlements and a resilient rural economy. Nevertheless, the

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<sup>3</sup> A panel comprised of development industry professionals and representatives of key statutory bodies

<sup>4</sup> Ref APP/P1133/A/13/2197335

<sup>5</sup> Email: Christine Bolton to Neal Jillings 6 January 2014 09:24

intention remains that development within the countryside will be strictly managed and limited to uses which are necessary to meet this overall aim. In practice, as with the adopted local plan policy H7, this amounts, inter alia, to a restriction on open market housing schemes such as the proposal at issue unless these can be justified by other material considerations. Affordable housing for local needs is permitted outside settlement limits and, while the unilateral undertaking provides for an element of affordable housing, the primary purpose of the scheme at issue is to develop the site for open market housing. (The Council suggested that the scheme should be restricted by condition to a defined lesser quantum of local needs affordable housing. However, that would not be reasonable because it would fundamentally alter the nature of what is being applied for, contrary to the advice of Circular 11/95 *The Use of Conditions in Planning Permissions*.)

19. Policy S21 of the submitted local plan states that the defined villages will be appropriate locations for limited development which meets their social and economic needs, protects their rural character and is consistent with the need to minimise travel. It is clear that the intention to do so encompasses the intention that such limited development will be largely confined within the settlement limits. The proposed development at issue would be at odds with that intention as well as the restrictions imposed by policy H7 of the adopted local plan. As regards the overall settlement pattern, the underlying philosophy of the emerging plan as a whole is made abundantly clear in the explanation to policy S21. This says... "*The plan focuses development on the urban areas as the most sustainable locations for new residents and workers. Therefore there are no specific proposals in this plan for the villages. Instead, subject to retaining local services, small scale proposals which meet local needs and conform with the policy should continue to come forward. The policies map defines settlement limits.....*"
20. Moreover, the Council clearly sets out in policy S4 of the submitted local plan the intended distribution of new housing, approximately 90% of which is to be distributed amongst the named towns, leaving the remaining 10% to be distributed between some 19 settlements classified for policy purposes as villages (two of which, Exminster and Starcross, would have amended settlement limits) and, subject to the constraints of policy S22, the wider countryside. There is little to support the proposition that a village such as Bickington is regarded as a notably sustainable location for significant new housing development but rather it is apparently seen as less unsustainable than rural locations in the wider and particularly the more remote countryside. While the appeal site is by no means remote from Bickington, it is nevertheless separate from the defined settlement limit and therefore subject in any event to a differing policy approach than the settlement itself. I am not persuaded by the view that, of itself, proximity to a named settlement necessarily enhances the sustainability credentials of the appeal site; certainly not to the extent that relevant policy in that regard could be lightly set aside.
21. The reality of the location is such that, while there would be limited bus services available, there is very little in the way of services and facilities within a convenient walking distance and most residents would be deterred from cycling to Newton Abbot by the nature of the roads. In practice, private motorised transport would be the mode of choice and in most cases necessity for essentially practical reasons and, whilst the Framework recognises that this is largely inevitable in rural areas, it is nevertheless a core planning principle,

embodied therein, that patterns of growth should be actively managed to make the fullest possible use of public transport, walking and cycling, and that significant development should be focussed in locations which are or can be made sustainable.

22. In that context, I see little justification in locating more than the limited housing anticipated by local policy criteria in the Bickington location. More specifically, to locate open market housing beyond the defined settlement limit at the appeal site would represent a harmful conflict with the general policy intention to direct such housing to the more sustainable locations within the Council's area. An absence of appropriate restraint in that regard would run counter to the intentions of existing and emerging development plan policy and those of the Framework.

### *Biodiversity*

23. The appeal site is within a strategic flyway for the Greater Horseshoe Bat population, the existence of which is the special interest addressed by the designation of the South Hams SAC. Moreover, on the face of it, the location, where flyways between the roosts at Chudleigh, the Haytor and Smallacombe mines and Buckfastleigh coincide appears, potentially, to be a de facto 'pinch point' in the network; in other words a situation where the network is significantly restricted by limited opportunities to commute due to urban encroachment or other habitat limiting reason. The habits of this species are complex and seasonally varied according to the availability of their particular prey and the mating and maternity cycle. The bats require a more than usually dark environment and linear features in the landscape to move through it between roosts and foraging areas and the three hours after sunset are, according to the relevant guidance, hours of peak activity. They are therefore especially susceptible to the impact of artificial lighting and are dependent, moreover, on linear features such as vegetated water courses, exemplified at the appeal site by the tree lined banks of the River Lemon.
24. The flow diagram in the relevant guidance clearly shows that the outline application for the appeal site, which is for up to 25 dwellings, triggers or has the potential to trigger, the need for a series of bat surveys to be conducted according to the specification in its Section 5. The ecological survey submitted did not extend to the detailed surveys that should have been triggered by the relevant guidance but the appellant argues that the sort of approach contemplated by the relevant guidance in respect of *minor proposed developments*, i.e. an assessment of existing and likely greater horseshoe bat habitat by a suitably qualified ecologist as a basis for appropriate mitigation measures would, in this instance, suffice. A further report from Colmer Ecology Ltd was included with the appellant's statement but this mainly promotes the view that surveys of the type advocated by Natural England are not necessary as a number of mitigation measures could be secured by condition and linear features, including not only the River Lemon and its associated vegetation but also hedgerow boundaries to the overall site would remain undisturbed.
25. The argument that the assumed presence of commuting bats along the River Lemon and a series of mitigating measures, including setback from the river beyond the area currently used for tents and touring caravans, both activities which tend to introduce artificial light in the summer months at least, together with a general lack of destruction of other potential linear features such as

boundary hedging, has an attractive, and apparently logical, simplicity and was articulated by the appellant's consultant ecologist, whereas the Council's adviser advocated a more cautious approach in line with the reservations expressed by Natural England in its letters of 15 August 2013 and 30 January 2014.<sup>6</sup>

26. I have considered the matter carefully, both from a statutory and a practical point of view, taking account of the differing expert opinion presented. It seems to me that Appropriate Assessment under the Habitats Regulations, which are engaged by the presence of a European site and potentially harmful impacts upon it, demands, as a general principle, adequate survey information relevant to the species and habitat potentially threatened. In this case the species is an inevitably mysterious creature whose habits, requirements and sensitivities are generally understood but whose presence within and habitual use of a putative flyway, such as that within which the appeal site is situated, cannot be well understood, or robustly addressed in terms of mitigation in the absence of specialised survey information. The relevant guidance attempts to balance the need for adequate information, both as to existing baseline conditions and likely future conditions after mitigation, to avoid excessively onerous survey requirements, notably by classifying certain developments as minor. However, in view of the various 'tests' set out in the relevant guidance I am not persuaded that, in principle, no specialised surveys are required. Within the context of the flyways, the development proposed is clearly significant with the potential to be harmfully disruptive.
27. In practical terms it seems an easy assumption that the removal of camping and caravanning activities from alongside what would appear to be the obvious commuting route for the bats and its dedication to open space use would actually improve matters and that alternative routes including hedgerow boundaries could be used also if left intact. However, in practical terms the use of the appeal site as a whole would be changed from essentially an open field with camping and caravanning pitches (which of course have the potential for some light disturbance of varying significance as different occupiers utilise the pitches) to a permanent form of built development with the potential that introduces for artificial light from windows in addition to external lighting, both of public and private spaces. While external lighting could be largely controlled by planning condition the impact of window light, which, on a cumulative basis, can be significant and persistent in housing areas, would rely primarily on design and positioning of individual dwellings. Any scheme of details for approval would need to be informed not only by the possibility of significant use of the River Lemon corridor, but also by the possibility that the species might, as an alternative, utilise other linear features impinging on the site.
28. Bearing such considerations in mind I am inclined to the view that the approach advocated by the appellant in this instance is essentially informed guesswork. In many situations that would arguably be sufficient in that the balance of probability may inform decision taking. However, the South Hams SAC is self-evidently an important area in biodiversity terms and its functionality in terms of the strategic flyways is clearly fundamental to its integrity as habitat, as evidenced by the specific initiative of Natural England in creating the relevant guidance. Once it is compromised, notwithstanding nature's inherent adaptability, the resultant harm to the habitat would be

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<sup>6</sup> Doc 2

effectively permanent. The best safeguard is adequately detailed information about the interaction of the species with any particular site proposed for development and in this case that information is simply not available. In all the circumstances I therefore prefer the cautious approach advocated by Natural England and the Council to the simpler stance of the appellant. Although this is based on professional assumptions which, at face value, seem reasonable, the underlying lack of specific information about the manner in which the site is actually used by the Greater Horseshoe Bat militates against the robustness of conclusion that is in this instance required.

29. All in all I cannot conclude with certainty that the interests of biodiversity would not be unacceptably harmed or that the mooted mitigation measures would in practice be sufficiently effective, and this must clearly weigh heavily against the proposal as currently presented. Appropriate assessment cannot, in my view, be adequately undertaken on the basis of the information to hand.

#### *Flood risk*

30. The Flood Risk Assessment submitted with the application shows that part of the site alongside the River Lemon falls within Flood Zones 2 and 3 but that the bulk of it falls within Flood Zone 1 as a consequence of the topography. The likely limits of the river's influence in this respect, broadly coincident with the Environment Agency mapping of Flood Zones 2 and 3, are fairly clear upon examination of the site. Subject to the imposition of appropriate conditions, the Environment Agency raises no objection to the proposed development and there is no evidence to suggest that it would increase flood risk elsewhere.
31. The Council, however, contends that the proposal fails the sequential and exception tests because the appellant owns other land that falls entirely within Flood Zone 1.
32. I do not find the Council's reasoning persuasive on this matter notwithstanding that Policy EN4 of the submitted local plan is clearly designed to mirror Framework policy on flood risk by directing developments to Flood Zone 1 where possible, only contemplating (subject to specified criteria) development within Flood Zones 2 and 3 where it is not possible to locate it in Flood Zone 1. The Framework advises that Local Plans should apply a sequential, risk-based approach to the location of development to avoid where possible flood risk to people and property. Paragraph 103 of the Framework articulates the approach to be used in the determination of specific planning applications.
33. In this case, the proposed housing itself would be located in the majority of the site which is not at significant risk because there would be a low probability of flooding. Although in outline, this is the clear intention of the submitted application and the outcome could readily be secured by condition.
34. The Council's approach in this case confuses the location of application sites (as defined by the 'site edged red') with the location of vulnerable development. This approach could readily be circumvented by the technicality of simply excluding areas within Flood Zones 2 and 3 from the site boundary, but in practical terms that would achieve little other than to prevent appropriate treatment of such land by excluding it from the purview of any resultant planning permission. The fundamental policy intention is to prevent vulnerable categories of development from actually being built on land susceptible to flooding and application sites routinely encompass land in more than one flood



zone. The important object is to design or condition schemes so as to meet that policy intention and that would be perfectly possible in this instance.

35. For these reasons, flood risk does not weigh against the proposal.

*Overall conclusion*

36. For the above reasons, I consider that the proposal would give rise to harmful conflict with the intentions of the development plan, the emerging development plan and the Framework in respect of the location of development and the interests of biodiversity. The sustainability credentials of the proposed development are therefore limited and the presumption in favour of sustainable development, as articulated in paragraph 14 of the Framework is not in any event engaged because relevant policies, notably in respect of housing land supply, are no longer out of date, in that the policies of the submitted local plan may in that respect now be accorded very significant weight.

37. I acknowledge that, through the Unilateral Undertaking, the scheme would address impacts in respect of recreational facilities including open space and education and that the affordable housing proposed would be a significant benefit locally. I also recognise that there could be some limited gains over and above the existing situation as regards flood risk.

38. I have taken these and all other matters raised into account but no material considerations sufficient to outweigh the harmful conflict with the intentions of relevant policy have been identified. I therefore conclude, on balance, that the appeal should be dismissed.

*Keith Manning*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Neal Jillings BSc (Hons) MA MRTPI	Jillings Hutton Planning
Guy Langworthy	Rule 5 Land Limited
Ian Crowe BSc (Hons) PGDip C.ENV. MCIEEM	Ecologic Consultant Ecologists LLP
Tim Ayres	Thackard Limited

### FOR THE LOCAL PLANNING AUTHORITY:

Jeremy Ebdon BSc (Hons) DipTP MRTPI	Senior Planning Officer
Simon Thornley BSc (Hons) BTP MRTPI	Business Manager Strategic Place (Policy)
Christine Bolton	Appeals Officer

### INTERESTED PERSONS:

Mr J Cox	Chairman, Bickington Parish Council
Mrs H Foss	Local resident
Mr B Smith	Local resident
Mr D Banton	Local resident

## **DOCUMENTS**

- 1 Council's notification letter
- 2 Email from Natural England (Julien Sclater) dated 30 January 2014
- 3 South Hams SAC Greater horseshoe bat consultation zone planning guidance
- 4 Teignbridge District Council Local Plan 2013 – 2033: Submission *Statement supporting the five year supply calculation within the Teignbridge Local Plan (June 2013)*
- 5 News – 20 December 2013 – Local Plan (message from Local Plan Inspector via Programme Officer)
- 6 Comparative inset maps for Bickington from existing and emerging local plans
- 7 Unilateral Undertaking dated 20 January 2014
- 8 Teignbridge Local Plan 2013-2033 *Proposed Submission November 2012*