



Appeal Decision

Site visit made on 3 June 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th June 2019

Appeal Ref: APP/W1145/W/19/3220228

Land adjacent to Allens Lane, Cookbury, Devon EX22 7BA

- 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 Mr William Skeats against Torridge District Council.
 - The application Ref 1/1103/2018/FUL, is dated 15 October 2018.
 - The development proposed is animal centre private to dwellinghouse, plus dwellinghouse and infrastructure, domestic agricultural sheds, owner's rest/tea room, virtual shop.
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Decision

1. The appeal is dismissed and planning permission for the animal centre private to dwellinghouse, plus dwellinghouse and infrastructure, domestic agricultural sheds, owner's rest/tea room, virtual shop is refused.

Preliminary Matters

2. The application was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for four reasons relating to its location in the countryside, its effect on the character and appearance of the area, its effect on the highway network and due to the absence of evidence demonstrating that foul water could be adequately managed.
3. Since the appeal was lodged, the National Planning Policy Framework has been revised. As policies relevant to this appeal have not significantly changed, I have had regard to the 'revised Framework', published in February 2019, in the determination of this appeal.
4. My attention has been drawn to two previously dismissed appeals relating to the site¹. Whilst, these are material considerations, I have assessed the current scheme against the latest local and national policies and guidance.

Application for costs

5. An application for costs was made by Mr William Skeats against Torridge District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

¹ APP/W1145/A/14/2218147 and APP/W1145/A/14/2229239

- whether the development accords with the policies of the Development Plan in respect of locating new housing;
- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on the highway network; and
- the adequacy of provisions for foul drainage.

Reasons

Location of new housing

7. In terms of the introduction of the new residential development, Policy ST07 of the North Devon and Torridge Local Plan² (Local Plan) is relevant. The Policy refers to unnamed 'rural settlements' that contain at least one service or community facility where it may be acceptable to accommodate development of a modest scale to meet locally generated needs. The appeal site forms part of a field within open countryside accessed via a lane from the small village of Cookbury. The appeal site is clearly divorced from Cookbury and nor is there one of the prescribed services or community facilities nearby. There is no evidence to suggest that the appeal proposal arises from a locally generated need.
8. Local Plan Policy ST07 also allows for limited development in the countryside to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. The proposal to develop the site in the manner described is not based on an economic or social need, nor does it involve the reuse of a building that would otherwise accord with the aims of policy ST07.
9. In terms of development restricted to a countryside location, whilst the other elements of the proposal include an animal centre and agricultural buildings, there is little evidence to suggest that the dwelling is essential or functionally required in relation thereto. Some loose descriptions of sheep-keeping, woollen by-products, internet shopping and general storage are denoted on the plans, but these do not give me sufficient details upon which to base any substantive conclusions in relation to their compliance with the policies of the development plan. The appellant's suggestion that the proposal may safeguard or contribute to economic activity or rural employment opportunities does not appear to be substantiated by any evidence of a coherent business plan for the proposal.
10. The appellant has drawn my attention to the Braintree case³. However, that case related to the consideration of 'isolated' in the wording of Paragraph 55 of the former Framework (2012). Given the development plan policy of relevance in this case, which I consider is in conformity with the revised Framework, I am of the view that the Braintree case is not particularly decisive in the determination of this appeal. I also consider that the appeal site is isolated when considered in the light of the ordinary sense of the word. As such, in view of its isolated location, future occupiers of a dwelling in this location would be dependent on private car-borne transport to meet the majority of their needs, given the remoteness of the site from public transport and essential services.

² North Devon and Torridge Local Plan 2011 – 2031 (adopted October 2018)

³ Braintree District Council v Secretary of State for Communities and Local Government [2017] EWHC 2743

11. The development is not located within a settlement boundary where support for new residential development exists. National policy is clear that the planning system should be plan-led. The policies within the adopted Local Plan set a clear and unambiguous strategy for development which precludes development of the appeal site. There is no evidence in the appellant's submitted documents referring to this Policy or any other policy forming part of the Development Plan or Framework that indicate why a decision ought to be taken other than in accordance therewith.
12. Therefore, in view of the first main issue, I find that the proposal conflicts with the strategy for the location of new housing development set out in Local Plan Policy ST07 and the revised Framework.

Character and appearance

13. The appeal site is a narrow sloping parcel of agricultural land. Until a recent incursion into the hedgerow to provide a gated access onto the lane, it would have been fully enclosed on three sides by a hedgerow embankment with trees above. The gated access now provides a view into the site from the lane, but it is otherwise in a relatively sheltered landscape context and screened from view by the surrounding hedges and trees.
14. The appeal proposal would comprise a large dwellinghouse and three separate agricultural sheds. The dwelling would be two storeys high with an adjoining single storey garage. The agricultural sheds would appear typically agricultural in nature, each identical in size and 5.95 metres high.
15. The proposed dwelling would be substantial in scale and would markedly change the intrinsically rural character of the site and surrounding area. Whilst it may have been designed to be energy efficient and incorporate design references from dwellings within the surrounding area, the dwelling would appear a significantly incongruous feature in its isolated rural context.
16. Considered individually, the scale, massing and design of the agricultural sheds would not appear out of character with the agricultural character of the area, but by virtue of their number, utilitarian layout on the appeal site and combined effects, they would also form a substantially urbanising and incongruous feature within the landscape.
17. Collectively, the proposed buildings and associated above-ground development would result in a significant mass of buildings and domestication that would harm the character and appearance of the area. Whilst the tree screening on some boundaries would limit their visual effects to an extent, they would still be visible from certain viewpoints and would be harmful in these views.
18. The appellant's appeal documentation puts forward a number of wide ranging points about the design of the proposal and the aspects of the surrounding natural environment which have informed it. Whilst I have considered these points, I do not find that the proposal would maintain the character and appearance of the area and it would not be appropriate to rely on the fact that the proposals would be sheltered from some views by hedges and trees.
19. In view of this main issue, the proposal would harm the character and appearance of the area, contrary to Local Plan Policies ST04, DM04 and DM08A, which collectively, amongst other things, seek to ensure new development responds to the characteristics of the site, its wider context and

the surrounding area, reinforces the key characteristics and special qualities of the area in which the development is proposed and avoid adverse landscape and seascape impacts.

Highway network

20. The appeal site is accessed by a long length of unmetalled track (Allens Lane) some distance from Cookbury. At the top of the lane where it leaves the metalled highway there is a sign indicating that it is "*unsuitable for motors*". Whilst it may be useable with farm machinery and four wheel drive vehicles, due to its uneven surface and large muddy and waterlogged areas, I found this to be an accurate warning for the condition of the lane for a typical vehicle. Furthermore, there are limited passing places for vehicles to pass one another should the need arise.
21. The Council indicate that Allens Lane is a Byway Open to All Traffic (BOAT) and that the resurfacing of it would not be considered a viable option. Whilst the viability of resurfacing the lane may be disputed by the appellant, it does not appear that this is included in the proposal before me insofar as is evident on the submitted documentation. In the absence of substantial upgrading works, the lane is unsuited to any increase in vehicular movements such as that would be created by a residential use.
22. The lack of maintenance of Allens Lane by the Council and the limited extent to which mobility impaired people can use it are not matters directly related to this proposal. I am also mindful that the emergency services could find a way to navigate Allens Lane and reach the appeal site should the need arise; however, this does not mean that it would be an efficient journey or one capable of being made without an appropriately selected vehicle.
23. I note the suggestion that the appeal site is within reasonable commuting distance considered in a broader context. Whilst some commuters may choose to travel long distances to their place of work, that does not set aside the objectives of national policy to locate most new dwellings in areas where the need to travel is minimised and where there are a range of sustainable travel options.
24. In view of this main issue, the effect of the proposal on the highway network would not be acceptable and conflict would arise with Local Plan Policies ST10 and DM05, which seek to reduce the environmental and social impacts of transport by, amongst other things, reducing the need to travel by car and enabling alternative sustainable travel options through careful design, layout and integration to the existing built form. Conflict would also arise with Local Plan Policy DM06 which requires, amongst other things, that all developments have safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users including cyclists and pedestrians.

Foul drainage

25. NDTLP Policy DM02 sets out that development will be supported where it does not result in unacceptable impacts to pollution of surface or ground water including rivers, canals, other watercourses, water bodies, wetlands, water gathering grounds including catchment areas, aquifers, groundwater protection areas, harbours, estuaries or the sea. The proposal includes a non-mains foul

drainage solution but no percolation test results have been provided to indicate that such a system would be viable.

26. Whilst the appeal site is large and a sizeable area on its lowest lying parts would remain green and could be set aside as a drainage field, there does not appear to be any measurement of how freely draining the soils are and whether the area set aside is sufficient to accommodate the requisite drainage field. Whilst a condition may be used in some circumstances to require the specific details of such a non-mains solution, the requirement for percolation test results that indicate the viability of such a system or otherwise should not be left until after the position of buildings and other hard surfacing is fixed.
27. In view of this main issue, in the absence of evidence to the contrary, the proposal would not make an adequate provision for foul drainage and would therefore conflict with NDTLP Policy DM02.

Other Matters

28. Notwithstanding my findings in respect of the location of the development, its effect on the character and appearance of the area, its effect on the highway network and the adequacy of provisions for foul drainage, I note that the Council has not raised any issues in respect of the impacts on the biodiversity of the site or any harm to future or neighbouring occupiers.
29. I note the appellant's concern that the Council did not engage with him during the course of the application and failed to reach a decision within the prescribed period. Notwithstanding this, I have considered the scheme before me on its own merits, and my findings in relation to the main issues are therefore unaffected by the time delays or suggested lack of dialogue.
30. Whilst I note from the appeal documentation that the appellant has offered to pay "developer contributions", there are no details of any sought by the Council that would be directly related in scale and kind to the proposal or necessary to mitigate its impacts. Nor has any Legal Agreement under Section 106 of the Town and Country Planning Act (1990) (as amended) been submitted for my consideration. As such, I am not able to attach any weight to this matter.

Conclusion

31. For the reasons given in the main issues, the development would conflict with the policies in the development plan in terms of the strategy for locating new housing. It would also generate harm to the character and appearance of the area, have an unacceptable effect on the highway network and the provisions for foul drainage have not been demonstrated as being adequate.
32. Whilst there may be benefits to the appellant in terms of the creation of a new market home, and from the addition of one dwelling to the housing stock, these benefits, do not amount to material considerations sufficient to justify a decision contrary to the aforementioned policies of the Development Plan.
33. For the reasons identified above, and having regard to all other matters raised, the appeal is dismissed.

Hollie Nicholls

INSPECTOR