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## Appeal Decision

Site visit made on 18 June 2019

**by M Bale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 July 2019**

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**Appeal Ref: APP/U1105/W/19/3223511**

**Harcombe House, Road from Harcombe Cross to Rhode Dene, Harcombe DT7 3RN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Richard Kiernan against the decision of East Devon District Council.
  - The application Ref 18/2446/VAR, dated 22 October 2018, was refused by notice dated 19 December 2018.
  - The application sought planning permission for alterations & change of use to single dwelling & eight units of holiday accommodation without complying with a condition attached to planning permission Ref 7/89/99/P1711/00183, dated 22 November 1999.
  - The condition in dispute is No.2 which states that: With exception of the dwelling, the units of accommodation hereby permitted shall be used as holiday accommodation only and shall not be occupied by any one person, family or group of people for more than four successive weeks in any calendar year.
  - The reason given for the condition is: To ensure that the accommodation is not used permanently for residential purposes in the interests of maintaining highway safety and to avoid an over-intensive use of the site.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by East Devon District Council against Mr Richard Kiernan. This application is the subject of a separate Decision.

### Background and Main Issues

3. The appeal relates to a condition that limits the occupation of dwellings at the appeal site to holiday accommodation only. If I were to allow the appeal, the effect would be to allow unrestricted occupation.
4. The main issues are whether the site is in an appropriate location for unrestricted dwellings with regard to accessibility; and the effect on the local tourism economy.

## Reasons

### Location

5. Strategy 7 of the East Devon Local Plan 2013-2031 (LP) indicates that locations outside defined Built-up Area Boundaries, which include the appeal site, should be defined as the countryside. Alongside LP Policy TC2, which seeks to minimise the need to travel by private car, Strategy 7 seeks to impose a general restraint on new development in the countryside that is not explicitly permitted by other local or neighbourhood plan policies. Thus, new unrestricted dwellings are not supported in such locations.
6. The Council has expressed some concern that permanent residential occupation could lead to a more intensive use of the site, with additional domestic paraphernalia and the subdivision of gardens. However, there is no substantive evidence that this would necessarily occur. Ultimately, the Council did not refuse permission for this reason so I attribute it limited weight. I, therefore, find no substantive evidence that the proposal would harm the landscape and scenic beauty of the Area of Outstanding Natural Beauty within which the site is located or conflict with other objectives of LP Strategy 7 in respect of protecting the local environment.
7. A previous appeal<sup>1</sup> in 2016 considered the same proposal as that before me, soon after the LP was adopted and, so, in the same local policy environment. It is, therefore, a weighty material consideration. That Inspector, found the site to be relatively isolated in relation to local services, being connected by a narrow, unlit and undulating minor road to the nearest services and facilities. The Framework is (and was then) clear that dwellings should be avoided in isolated locations unless certain exceptions are met. The site was found to be in a location where the need to travel could not be minimised and so it conflicted with LP Policy TC2.
8. Since this time, the Judgement of *Braintree DC v Secretary of State for Communities and Local Government [2018] EWCA Civ 610* has clarified that 'isolated' should not solely be construed in relation to accessibility to services. The appeal site is part of a clear continuous straggle of dwellings that stretch along the minor road and, based on my observations, is not isolated in the context of *Braintree*.
9. That is not to say that general policies of development restraint should be set aside. Moreover, there is no substantive evidence that circumstances have changed within the area since the previous decision that would make the site more accessible to services, or future residents less reliant on private cars. However, unlike the previous Inspector, in not finding the site to be isolated, I am mindful of Framework Paragraph 78 that indicates that development in one settlement can help support services in other rural settlements.
10. The previous Inspector found nothing to suggest that permanent occupation would be more beneficial to the local economy than tourist accommodation. However, I do not have the benefit of the full body of evidence that was before that Inspector and I am advised that there is a range of services in nearby Uplyme. These include a primary school and village hall, and there is no

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<sup>1</sup> APP/U1105/W/15/3137366

compelling evidence that additional residents would be anything other than a benefit to supporting those services.

11. The existing use will generate some traffic and there is no substantive evidence that the proposal would lead to substantially more traffic. This significantly reduces the weight that I attribute to the conflict with Policy TC2 and, considered overall, with regard to the above matters, I find that the site to provide an appropriate location for additional unrestricted dwellings on the basis of accessibility.

### *Tourism*

12. LP Policy E18 seeks to resist the loss of holiday accommodation. The first part of the policy clearly relates to locations within the main, defined, seaside resorts of Exmouth, Budleigh Salterton, Seaton and Sidmouth. The second part of the policy, requires that permission for change of use should not be permitted unless it can be clearly demonstrated that there is no longer a need for such uses and that the building or site has been marketed for at least 12 months at a realistic price without interest.
13. The appellant contends that the second part of the policy, that does not explicitly say that it applies outside the seaside resorts, is not relevant to locations outside those resorts. But it does not say that it applies only within such locations either. The supporting text, at paragraph 24.28, whilst indicating that policy sets the context for consideration of proposals involving the loss of holiday accommodation within the resorts of Exmouth, Seaton and Sidmouth as a whole, also indicates that holiday accommodation elsewhere in the district is essential to maintain a viable tourism base.
14. My attention has been drawn to a number of other appeal decisions, including a site at Appledore Farm<sup>2</sup> which also fell to me, and a site at Lea Hill<sup>3</sup> where the Policy was found to apply outside the seaside resorts. I note that this interpretation is currently being challenged through the Courts<sup>4</sup> but as this is undecided, I cannot attribute any weight to the arguments presented in the associated submissions.
15. The supporting text at LP paragraph 24.28 is not policy and cannot trump the policy wording. However, it provides clarity and rationale to support this approach and it is not necessary to read in additional words to the policy to reach this interpretation. As such, I find no substantive evidence to lead me away from my earlier finding on the policy, shared by the other Inspector, that the policy should apply to sites outside the seaside resorts. Policy E18 is, therefore relevant to this main issue. Whether or not any individual proposal complies with Policy E18 must be determined on a case by case basis.
16. Reading the Policy in the way I have outlined, permission should not be granted unless there is no longer a need for the accommodation and that the site has been appropriately marketed. This is distinct from in the seaside resorts where viability is relevant. In any event, whilst the business has been said to be unviable, this is little more than unsubstantiated assertion and as a discrete issue, therefore receives very little weight.

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<sup>2</sup> APP/U1105/W/18/3195007

<sup>3</sup> APP/U1105/W/18/3196540

<sup>4</sup> Mrs Claire Mills v Secretary of State for Housing, Communities and Local Government and East Devon District Council. Claim No: CO/5007/2018

17. The appellant's evidence indicates that the site has been marketed for at least the last 5 years with no serious interest being generated. The surveyor responsible for the conduct of the marketing has indicated that this is due to a lack of viability of the business and that the returns do not justify the work involved in its running. However, whether or not that is the case, there is no substantive evidence that the two matters are exclusively related and other factors could also influence the lack of sale. Moreover, I have little substantive evidence regarding the marketing, in particular the instructions on which the selling agent was asked to proceed and how the asking price has been derived.
18. The requirement to market 'at a realistic price' is a clear criteria of Policy E18 and, accordingly, without such detailed evidence, I cannot find that the policy has been complied with. In addition, whilst there may be increased supply and competition within the holiday rental market neither this in itself, nor any other evidence, before me demonstrates a conclusive lack of need for the accommodation. Accordingly, I find the proposal to conflict with LP Policy E18, which would result in an unjustified loss of tourism accommodation and a harmful effect on the local tourism economy.

### **Other matters**

19. I have been provided with a copy of the Uplyme Neighbourhood Plan (2017) but there is no suggestion that its policies should lead me away from my findings above.

### **Conclusion**

20. Whilst the site may be in an appropriate location with regard to accessibility, the loss of holiday accommodation has not been justified. Policy E18 could be a specific local plan policy that would allow the proposal to proceed under Strategy 7 if complied with. However, whether or not the removal of an occupancy restriction should be considered an act of development, I have found that the conflict with the Policy brings the proposal into conflict with the aims of LP Strategy 7 insofar as it only permits proposals that are explicitly permitted by other development plan policies. As decisions should be made in accordance with the development plan unless material considerations indicate otherwise, I attach full weight to the policy conflict.
21. It follows from this that the development plan is not absent or silent in respect of this proposal. There is nothing to suggest that I should make a decision other than in accordance with the development plan.
22. The above leads me to conclude that the condition is justified and should remain. Therefore, the appeal is dismissed.

*M Bale*

INSPECTOR