



Appeal Decision

Site visit made on 4 June 2019

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2019

Appeal Ref: APP/W1145/W/19/3224956

Land adjacent to Torridge Road, Appledore, Devon, EX39 1SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Harris (Harco Trading Ltd) against the decision of Torridge District Council.
 - The application Ref 1/0211/2018/OUT, dated the 26 February 2018, was refused by notice dated the 26 September 2018
 - The development proposed seeks outline planning permission with all matters reserved for two dwellings, public picnic area and retention of coastal path.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the site address and description of development as they appear on the Council's decision notice, as these are more accurate and precise.
3. The appeal relates to an outline application with all matters reserved for future approval. The application was accompanied by an illustrative plan, drawing No. 17028/200 Rev.B, showing two detached dwellings. I have, therefore, proceeded to determine the appeal on the basis that the application seeks outline planning permission for two detached dwellings.
4. Since the application was refused, the Council have adopted the North Devon and Torridge Local Plan 2011 – 2031 (NDTLP), which supersedes the policies in the Torridge District Local Plan (TDLP). As a consequence, those policies from the TDLP, referred to in the Council's reasons for refusal, are no longer relevant in that they do not form part of the development plan. The Council have confirmed, in their Appeal Statement, that with the adoption of the NDTLP and the development boundary for Appledore, the appeal site sits outside that boundary and consequently the principle of development in this location should be assessed against Policy ST07 of the NDTLP. Both parties have had an opportunity to comment on this change and I have, therefore, proceeded to determine the appeal on this basis.
5. The appellant has raised concerns that the Council's views, in relation to issues raised by the proposed development, have changed from those set out in their Planning Committee Report. That may be so, but these are matters that need to be taken up with the Council. I can only determine the appeal on its individual merits, on the basis of the evidence that is before me and in relation to the prevailing planning policies.

6. The 2018 National Planning Policy Framework (Framework), referred to in the Council's decision notice, has been replaced by the February 2019 version of the Framework. However, the policies from the Framework that are relevant to this appeal have not changed.

Main Issues

7. The main issues are:

- whether the proposed development would be acceptable having regard to local and national planning policies on the location of housing; and
- the effect of the proposed development on the character and appearance of the area; and
- whether the proposed development would make a positive contribution to environmental sustainability with regard to coastal erosion.

Reasons

Location

8. The appeal site comprises a parcel of land on the western side of Torridge Road, and on the south western outskirts of Appledore.
9. Policy ST07 of the NDTLP sets out the spatial strategy for northern Devon's rural areas. It adopts a hierarchy, which seeks to direct new development to local centres and villages. Within those locations, development will be supported within defined development boundaries, on allocated sites or within the built-up areas of settlements that have no defined boundaries. Within other rural settlements, that benefit from one prescribed local service or community facility, small scale development to meet locally generated needs will be permitted. Beyond these locations and within the countryside, new development is limited to that required to meet local economic and social needs, involves the reuse of rural buildings or development that requires a countryside location.
10. The appeal proposal would not fall within any part of the hierarchy set out in Policy ST07. It is not an allocated site in the local plan; it is not within a defined main centre, local centre or village; it is not situated within a defined development boundary; and, it is not located within the built-up area of a settlement that has no defined development boundary. It is, therefore, located within the open countryside.
11. In relation to part (4) of Policy ST07, the proposed development would also not fall within any of the listed exceptions; in that it is not required to meet a local economic or social need; it does not involve the reuse of a rural building; and, it is not development that requires a countryside location.
12. I attach significant weight to the recently adopted spatial strategy of the NDTLP and accordingly Policy ST07. It is consistent with the policies of the Framework, that seek to resist inappropriate development in the countryside unless particular circumstances (exceptions) apply. No such exceptions apply.
13. The appellant accepts that the proposed development is 'technically' contrary to Policy ST07. In my view, it is in direct conflict with this policy and consequently with the spatial strategy of the NDTLP. It would result in

development within the open countryside and in a location that is regarded as being inappropriate and is not supported by the NDTLP.

14. The appellant argues that there are extenuating circumstances, namely, the appeal decision on the land opposite, the sense of natural injustice arising from the costs incurred in preparing various reports supporting the application and planning gain.
15. Dealing with these in turn, an appeal for 10 new dwellings, on the land to the east, was allowed in February 2018 (ref: APP/W1145/W/17/3188135) (2018 Appeal). However, it is clear from the Inspectors findings that the planning circumstances that led to that decision were very different, in that the Council were unable to demonstrate a 5 year supply of housing land and as a consequence, the housing policies of the development plan were out of date. I note that in paragraph 21 of the decision, the Inspector concluded that the housing land supply position was in fact "*serious and significant*." None of these circumstances now apply. The 2018 Appeal does not, therefore, affect the findings I have reached on this main issue.
16. In relation to the costs incurred by the appellant, it is not uncommon for policies to change or be replaced during the determination of an application or during the appeal process. In this case, the appellant would have been aware of the emerging NTDLP, its proposed spatial strategy and the likely timeline for its adoption. For these reasons, I cannot see that any natural justice implications arise.
17. The appellant's planning gain involves a proposal to divert the South West Coastal Path (SWCP), which runs along the western boundary of the appeal site, should future erosion result in the existing path becoming unusable. However, there is no evidence before me to indicate that, if required, this could not be secured by other means. Indeed, I note from Devon County Council Highways (DCC) consultation response that the long term plan in this area is to secure an off-road diversion, whereas the appellant's proposal would involve a short on-road diversion. I also note that the Council contest the appellant's contention that the development will protect the SWCP, given that, if the site remained undeveloped, DCC have the power to roll-back the footpath onto the appeal site, if required. The appellant has not challenged this statement. Given the above, I have not accorded any weight to this aspect of the appellant's proposal.
18. The appellant's planning gain also includes a new public picnic area, at the south western end of the site. However, this is not required to meet any policy objective and there is no evidence to show that it is required to address any demand for such facilities on the SWCP. The Council have also questioned how and who would manage the area in the future. For these reasons, the benefit arising from this is, in my view, limited.
19. I find, therefore, that that the proposed development would result in inappropriate development within the countryside and would be in direct conflict with the spatial strategy and thus Policy ST07 of the NDTLP.

Character and appearance

20. The appeal site forms part of an area of Undeveloped Coast, which replaced, through the adoption of the NDTLP, the Coastal Preservation Area (CPA)

designation that previously applied. Policy ST09 confirms that, within such areas, development will be supported where it will not detract from the unspoilt character, appearance and tranquillity of the area, and where the development is required as it cannot reasonably be located outside the area.

21. As I observed on my site visit, the appeal site is flat and overgrown, with boundary hedging that varies in height. It forms an attractive part of the landscape and backdrop to this part of the coast and the SWCP, from where it is visually prominent when walking, in either direction. Even though there is reference in the evidence that the proposed dwellings could be restricted to single storey, combined with the proposed area of parking and associated residential paraphernalia, the development would still, in my view, be highly visible and would harm the unspoilt character and tranquillity of the area.
22. I appreciate that the 2018 Appeal involved land that was also part of the CPA. However, the current appeal site is, in my view, of greater importance and value to the designated coastline, given that it is immediately adjacent to the estuary and the SWCP. As with most areas of coastline, your attention is immediately drawn to it and to its inherent natural qualities.
23. Paragraph 4.39 of the NDTLP says that the unspoilt coastline is an important tourist attraction and contributes significantly to the areas environmental quality and identify. It continues by confirming that undeveloped parts of the coastline are a finite resource that should be protected from further development. In my view, this part of the coastline exhibits many of these characteristics and the proposed development would, therefore, result in significant harm to the site's character and appearance, and the public's enjoyment of this undeveloped part of the coastline.
24. The appellant argues that the impact of the development would be mitigated when viewed in the context of the 2018 Appeal development and should be viewed as rounding-off. I do not agree. The appeal site is separated from 2018 Appeal development by extensive hedging and small trees, on either side of Torridge Road, as well as by the road itself. As a result, the appeal site is physically separate from the 2018 Appeal site and would not read as being part of that development (which has not yet been implemented). Neither would it involve the logical rounding-off of Appledore, albeit I note that the policies of the NDTLP do not support the principle of rounding-off within such locations.
25. I also note that the Inspector, in finding that the 2018 Appeal development would only result in a limited degree of harm to the character and appearance of the area, attached weight to the fact that that site would be seen in the context of the adjacent properties to the north east as well as those at the crest of the headland. In addition, that with the retention of existing boundary treatment and attention the design, scale and landscaping, the Inspector found that the impact from other nearby vantage points could be moderated. Those vantage points included the SWCP and Northern Burrows (located west of the appeal site and the estuary).
26. As I observed on my site visit, from the vantage points referred to by the Inspector, the appeal proposal would represent a marked change to the appearance of the coastline and to its landscape qualities. That finding is supported by the site's inclusion within area 'LCT;5b Coastal Undulating Farmland' in the North Devon and Torridge Joint Landscape Character

Assessment (JLCA). The special qualities of this LCT include its open uninterrupted sea views, which the JLCA's strategy seeks to protect.

27. The appellant argues that the 2018 Appeal sets a precedent for the current proposal. For the reasons set out above, I do not agree with this view. In addition, I have considered the appeal on its planning merits, having regard to the individual circumstances of this case. As I have also found, there are material differences between the two sites.
28. I find, therefore, that the appeal proposal would result in significant harm to the character and appearance of the area and this part of the Undeveloped Coast. Accordingly, the appeal proposal fails to comply with part (7) of Policy ST09 of the NDTLP. This confirms that new development will only be supported, in such locations, where it does not detract from the unspoilt character, appearance and tranquillity of the Undeveloped Coast. The policy also confirms that new development will only be supported where it is required as it cannot reasonably be located outside the Undeveloped Coast. There is no evidence before me to justify development in this location or to demonstrate why the appeal proposal could not be located elsewhere.
29. The appeal site lies adjacent to the North Devon Coast Area of Outstanding Natural Beauty (AONB). In the consultation response received from the North Devon Coast AONB Partnership (Partnership), they found that the site fell within the setting of the AONB. However, based on the appellant's Landscape and Visual Impact Assessment (LVIA), the Partnership concluded that they had no objection that the *"less than significant harms identified in the LVIA are taken into account in the planning balance"*. Whilst I accept that the impact on the AONB would not be so significant as to justify, on its own, the refusal of planning permission, there would still, in my view, be a moderate adverse impact on views from the Northern Burrows and from the linkages, both visual and physical (SWCP), between the open coastline within the AONB and the open and undeveloped coastline of the appeal site. This is a further factor in support of the findings I have reached above.

Coastal erosion

30. The appellant's Slope Stability Assessment (SSA) indicates that the proposed development would not be affected by coastal erosion in the short to medium term, defined as up to 50 years. The SSA defines the medium to longer term as 50 -100 years. Whilst the SSA says that predictions over this longer period are more difficult, it indicates that they expect the slope crestline will still, at the end of this period, be a significant distance from the proposed dwellings. However, the SSA also refers to the Environment Agency's estimates, which indicate that the slope could erode by 3.4 – 6.0 metres over the next 100 years. The SSA suggests that its more likely to be 3.4 metres, due to the site's protected position from storm events.
31. It is clear from this evidence that the timelines and predictions, on the level of erosion, are only indicators and estimates, based on a number of factors. This is reflected in the overall findings of the SSA, which says that slope erosion is *"unlikely"* to affect the proposed development in the short to medium term. I also note that the SSL says that the Council required the proposal to be designed so as to protect the development over the longer term, which would require protection measures in the form of a sea wall or rock armour.

32. Paragraphs 3.13 – 3.14 of the NDTLP (included with the Council’s Appeal Questionnaire) refer to the United Kingdom Climates Impact Programme and the North Devon and Torridge Flood Risk Assessments. Both draw attention to the likelihood of increased extreme weather events in the future, including storms and tidal surges, which combined with rising sea levels, are predicted to result in, amongst other changes, increased coastal erosion. Paragraph 167 of the Framework also says that plans should reduce the risk from coastal change by preventing inappropriate development in vulnerable areas.
33. Based on the above, the lifespan of the proposed development is uncertain and no firm guarantees can be given on the extent of future coastal erosion. In the circumstances, a cautionary approach should, in my view, be adopted that seeks to minimise the risk from future coastal erosion. Such an approach would be consistent with Policies ST01 and ST02 of the NDTLP, which requires development to mitigate and adapt to climate change and to contribute towards sustainability objectives by, amongst other things, protecting and enhancing the existing coastline.
34. Accordingly, I find that, on balance, that the proposed development would not make a positive contribution to environmental sustainability and would be contrary to the aims and objectives of Policies ST01 and ST02 of the NDTLP.

Other Matters

35. The appeal site lies adjacent to the Taw Torridge Estuary Site of Special Scientific Interest. However, I note that, subject to the inclusion of appropriate mitigation, Natural England have raised no objection to the proposed development. The Council have also not raised this as an issue and no other evidence has been submitted that would lead me to disagree with the findings of Natural England.
36. A benefit of the appeal proposal is that the development would make a small contribution to meeting future housing provision, and in this respect, it would be supported by policies in the development plan and Framework. However, this benefit is of limited weight and it is not sufficient to outweigh the significant adverse impacts that arise from the appeal proposal nor the clear conflict with planning policies that I have identified above.

Conclusions

37. For the reasons given above and having taken all other matters into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR