



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: 16th July 2019

Appeal Ref: APP/W1145/W/19/3224196

Lazy Acres, Stibb Cross, Devon, EX38 8LH

- 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 Les Withey against the decision of Torridge District Council.
 - The application Ref 1/1130/2018/FUL, dated the 19 October 2018, was refused by notice dated the 18 December 2018
 - The development proposed is erection of 1 No. two storey house and 1 No. dormer bungalow together with new point of vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have adopted the site address as it appears on the application form, with a slight modification.
3. The appellant has raised concerns over the Council's handling of the proposed development from the pre-application stage up until the application was determined. In particular, the appellant alleges that the Council stalled the determination of the application to allow for the adoption of the North Devon and Torridge Local Plan 2011 – 2031 (NDTLP) and that there was a lack of advice on the implications of this emerging plan. These are matters that need to be taken up with the Council, in the first instance. Even so, I can only determine the proposal that is before on its individual planning merits and in relation to the prevailing planning policies.
4. Following the submission of the appeal, the Council drew attention to a drafting error in its first reason for refusal, in that the reference to Policy DM07 from the NDTLP should have been to Policy ST07. I am satisfied that this error has not led to any prejudice, as the Council's Delegated Report made it clear that their objection arose from the provisions of Policy ST07. In addition, I note the appellant's were informed of this error in an email from the Council on the 2 April 2019 and that this was reaffirmed in the Council's Appeal Statement, to which the appellant had an opportunity to respond. It is also clear from the appellant's Statement of Case that they aware that the Council's objection, in this respect, related to the principle of development within the open countryside. I have, therefore, proceeded to determine the appeal on this basis.
5. The 2018 National Planning Policy Framework (Framework), referred to in the Council's decision notice, has since 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

6. The main issues are: (a) whether the proposed development would be acceptable having regard to local and national planning policies on the location of housing; and, (b) whether the proposed development would include an appropriate foul and water drainage strategy.

Reasons

Location

7. The appeal site comprises part of the existing grounds to Lazy Acres, which is located to the south of the A388, on the western outskirts of Stibb Cross.
8. The spatial strategy for northern Devon's rural areas is set out in Policy ST07 of the NDTLP. The policy adopts a hierarchy, which seeks to direct new development to local centres and villages. Development will be supported within the defined development boundaries of the identified settlements, as well as on allocated sites or sites within built-up areas of settlements that have no defined boundaries. Small scale development to meet a locally generated needs will also be permitted in rural settlements that benefit from one prescribed local service or community facility. Areas beyond these locations are defined as open countryside, where new development is limited to that required to meet local economic and social needs, involves the reuse of rural buildings or requires a countryside location.
9. The appeal site is not allocated for development 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. Whilst the site does adjoin the defined development boundary for Stibb Cross, it is located within the open countryside.
10. Given the above, the appeal proposal would not fall within any part of the hierarchy set out in Policy ST07. 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.
11. I attach significant weight to the spatial strategy of the NDTLP given its recent adoption, and accordingly Policy ST07. The approach is advocates is consistent with the policies of the Framework, in seeking to resist inappropriate development within the countryside unless particular circumstances (exceptions) apply. No such exceptions apply in this case.
12. The appellant has referred to the planning approval for two units on the southern part of the appeal site granted by the Council in 2015/2016, one of which, as I observed on site, has now been constructed. However, 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. None of these circumstances now apply.

13. The appellant has also referred to the fact that the application was validated before the NDTLP was adopted. That may be so, but the Council were clearly correct in determining the application against the policies that existed at the time of its decision. In addition, it is not uncommon for policies to change or be replaced during the determination of an application or during the appeal process.
14. The appellant argues that the development should be viewed as the infilling of garden land. I do not agree. There are no policies in the NDTLP which would support the principle of infilling in such locations. In addition, I agree with the Council, that the appeal proposal would result in more built development encroaching into the countryside. It would introduce more ad hoc development and contribute towards the further urbanisation of the countryside.
15. 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. Against that background, there are no material considerations that would indicate that a decision should be made other than in accord with the policies of the development plan. In particular, there is no evidence before me to justify two open market dwellings in this location, and the appeal proposal is not being promoted as an exception to address an identified local need or to meet a proven requirement for affordable housing.
16. The Council, in their reason for refusal, have also referred to Policies DM04 and DM08 of the NDTLP. However, these relate to ensuring that new development is of a good design and is, amongst other requirements, of a scale and mass that reflects its landscape setting. Neither of these policies are, therefore, relevant to this main issue. This finding is supported by the fact that the Council have not raised any objections to the design of the proposed dwellings or to their impact on the character and appearance of the area, and that their Delegated Report concludes that there would be no conflict with Policy DM04.

Foul and water drainage

17. The appellant proposes to connect the new dwellings to the existing sewage treatment plant constructed on the land to the south to serve the dwellings approved in 2015/2016. They indicate that this plant was designed to accommodate up to 25 people, is located downhill from the proposed dwellings and would therefore be relatively easy to connect to. The appellant's state that a larger plant than that required for the approved units was installed to cater for any future dwellings that might be built on the appeal site.
18. Whilst the Council's preference would be for the proposed development to connect to the public sewer, which is situated within the main road (A388), an approach that would be consistent with the hierarchy identified in the Planning Practice Guidance, the appellant contends that this would not be cost-effective or viable. Also, that it would be unnecessary, given the existence of available capacity within the existing plant, a facility that was approved by the Council in granting detailed consent for the two dwellings. The Council have not challenged the latter statements.
19. It is unclear from this evidence the exact reasons as to why the existing plant would not provide an effective system. The Council's reason for refusal implies that their concern arises from the lack of information provided on this plant.

However, neither their Delegated Report nor their Appeal Statement expand on this or provide any indication as to what additional information they would require, other than questioning the appellant's contention that connecting to the public sewer would not be cost effective.

20. Given the above and based on the evidence before me, I am satisfied that this is a matter that could be addressed by a planning condition requiring further details of the existing plant and the proposed foul water drainage strategy to be submitted to and agreed in writing by the Council in line with the requirements of Policies ST03 and DM04 of the NDTLP. In view of this finding, I have not considered this issue further.

Other Matters

21. Interested parties have raised concerns in relation to the overdevelopment of the site, impact of trees, overlooking and inaccuracies on the submitted plans. I understand that the latter was addressed through the submission of revised plans. In relation to the remaining issues, based on my observations on site and the evidence before me, I am satisfied that the appeal proposal would not result in any harm in these respects.
22. Concerns have also been raised in relation to the proximity of the proposed dwellings to the existing car workshop, located to the south east of the appeal site. However, I note that the Council's Environmental Protection Team raised no objections to the proposal based on the appellant's noise impact assessment. Whilst this assessment indicated that the proposed bungalow would be subject to some noise impact, it concluded that this would be mitigated through the design and detailing of this dwelling, and, as a consequence, there would be no significant adverse noise impact. There is no other evidence before me that would lead me to reach a different finding in this respect.
23. 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 clear conflict with local and national planning policies that I have identified above.

Conclusions

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

G Roberts

INSPECTOR