
Appeal Decision

Site visit made on 14 August 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2019

Appeal Ref: APP/U1105/W/19/3227752

Bystock Hayes, Old Bystock Drive, Exmouth, Devon EX8 5EQ

- 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 Mrs Lizzie Britnell against the decision of East Devon District Council.
 - The application Ref 19/0097/OUT, dated 14 January 2019, was refused by notice dated 8 April 2019.
 - The development proposed is construction of two detached dwellings with garages.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for subsequent approval except access and layout. Whilst the submitted plan provides a helpful indication as to how the development might take place, I have treated it as indicative only.
3. The site lies within 5km of the internationally designated Exe Estuary Special Protection Areas and the Pebblebed Heaths Special Protection Area and Special Area of Conservation. Whilst not a reason for refusal, it is incumbent upon me as competent authority to consider any such effects on the sites, I therefore address this matter later in my decision.
4. The Council provided a copy of the Exmouth Neighbourhood Plan Referendum Document 2018 – 2031 (the ENP) as part of the appeal. However, following my request for clarification as to its status, it was confirmed that the ENP was formally 'made' on 11 April 2019 and that no further changes were made to its contents post-referendum. I therefore attach full weight to the document as forming part of the Development Plan for the area.

Main Issue

5. The main issue is whether the appeal site would be suitable for the proposed development having regard to local planning policies on the location of housing and accessibility to services and facilities.

Reasons

6. The appeal site comprises a large, broadly rectangular brick walled open space attached to Bystock Hayes. The property forms part of a wider estate of former farm cottages and other buildings, set in a heavily landscaped environment on

- the outskirts of Exmouth. It is located some way from Dinan Way to the south, a main distributor road leading into Exmouth.
7. Access would be gained from Old Bystock Drive through a new driveway beyond an existing hardstanding area through a proposed new opening in the boundary brick wall.
 8. Section 38(6) of the Planning and Compulsory Purchase Act 1990 establishes that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. In turn, the National Planning Policy Framework (the Framework) states that where an application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), it should not usually be granted.
 9. The adopted East Devon Local Plan 2013-2031 (January 2016) (the LP) sets out a strategy for accommodating housing development which operates on the basis of 'Built-up Area Boundaries' (BuAB). These are designed to limit outward expansion of settlements so as to control the overall scale of development in line with the overall strategy of the Plan for sustainable development; prevent unregulated development across the countryside; and to define (within the boundary) locations for development which, in principle, will complement objectives of promoting sustainable development.
 10. To this end, LP Strategy Policy 6 and Strategy Policy 7 state that outside of defined BuABs, only exceptional forms of development will be permitted such as mixed schemes of market/affordable housing. It further establishes that sites for development may be specifically allocated, or otherwise promoted, beyond boundaries through a Neighbourhood Plan. In line with this approach, Strategy Policy 7 similarly defines all land beyond the boundaries as being countryside within which development is only permitted in accordance with a specific Local or Neighbourhood Plan Policy. This approach is broadly consistent with the aims of the Framework in requiring development plans to set out an overall strategy for the pattern and scale of development.
 11. In this instance, the appeal site lies beyond the defined BuAB by some 100m according to the Council's assessment, and therefore lies in the countryside for planning policy purposes. Moreover, ENP Policy EN1 re-confirmed the same settlement boundary and broadly mirrors the policy approach set out in LP Policies Strategy 6 and Strategy 7. The ENP also specifically identifies the Bystock House Estate as a locally important and distinctive area outside the BuAB where only minor proposals associated with existing residential or business premises, are likely to be supported. Whilst the term "minor proposals" is undefined, there is no suggestion that it should include the creation of new residential uses which are, by definition, resisted by the policies I have already referred to above.
 12. My attention has been drawn to a previous appeal decision on this site (Ref APP/U1105/A/14/2223721) which was dismissed in November 2014 (the previous appeal). I note that the Inspector concluded that it was likely that the private car would be used for some journeys but there would also be a reasonable choice of public transport, cycling and walking. In the event, the appeal was dismissed solely on the grounds of likely harm to an important tree, a matter which is not an issue of dispute between the main parties in the current appeal.

13. I have not been provided with the full range of evidence that the previous appeal Inspector may have seen in respect of public transport availability and no substantive evidence in this regard has been provided to me. Based on the submitted information and what I saw, I consider that whilst there may be a reasonable choice of public transport, cycling and walking, accessibility to them could not be described as good. Consequently, whilst the Council did not refuse the application on grounds of conflict with LP Policy TC2, the accessibility benefits are not sufficient to outweigh the clear harm I have found as a result of conflict with other policies in the Development Plan as described above.
14. In reaching this conclusion, it is a matter of some importance that the current Development Plan policies had not been formally adopted at the time of the previous appeal. Whilst I understand there was a conflict with the locational policies of the (then) Development Plan, the Inspector judged them to be out-of-date having regard to the policies of the Framework which was in force at the time. Consequently, little weight was attached to them and, indeed, the Council had not, in any event, refused the application on that basis given the lack of a five-year supply of deliverable housing sites.
15. In contrast, it is not a matter of dispute that the Development Plan is currently up-to-date, having been prepared following statutory processes including public consultation and independent examination. I have duly considered the appeal proposal in that context as required by the legislation.
16. For the above reasons, I therefore conclude that the proposal would not be in a suitable location having regard to the strategy and policies of the LP and the ENP. Whilst the site has some accessibility to facilities and services by means other than the car, the benefits in this regard would not be significant and would not be sufficient to outweigh the conflict with the up-to-date Development Plan.

Other Matters

17. As noted above, the likelihood of harm to designated habitats was a reason for refusal. The appellant has already made a financial contribution, under S111 of the Local Government Act 1972, to mitigate that harm through Strategic Access and Management Measures in line with a strategy developed through a partnership of local authorities and Natural England. However, as the appeal is to be dismissed for other reasons, it has not been necessary for me to consider this matter further.
18. I have had careful regard to a range of other concerns raised by interested parties including the effect of the proposal on the character and appearance of the area, noise, ecology highways and loss of sunlight. However, those considerations would not lead me to a different conclusion on the outcome of the appeal and I have not therefore addressed those matters further in this decision.
19. Overall therefore, the proposal is at odds with the locational strategy and policies of the LP and ENP. The accessibility benefits of the scheme highlighted by the appellant are not, in themselves, determinative and would not be sufficient to outweigh the conflict with the Development Plan. Consequently, by definition, the proposal would not represent sustainable development for which there is a presumption in favour.

Conclusion

20. For the reasons given, the appeal is dismissed.

Ian Bowen

INSPECTOR