



Appeal Decision

Site visit made on 14 October 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2019

Appeal Ref: APP/P1133/W/19/3220911

Quarry Farm, Stancott, Chudleigh, Devon, TQ13 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Christopher Burton against the decision of Teignbridge District Council.
 - The application Ref 18/02389/PIP, dated 19 November 2018, was refused by notice dated 4 January 2019.
 - The development proposed is described as seeking permission in principle for a proposed development of a minimum of 5 and maximum of 7 no. market and self-build dwellings.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Christopher Burton against Teignbridge District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - whether the proposal would constitute habitat development; and
 - whether this would be a suitable location for the proposed development.

Reasons

Habitat development

4. The appeal site lies within close proximity of the sustenance zone and flyway associated with the South Hams Special Area of Conservation (SAC) and also within 10km of the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation and Ramsar site (hereafter collectively referred to as the protected sites). The proximity of the appeal site to the protected sites is not in dispute between the parties.
5. Where proposals result in an adverse effect to a European site the proposal would be classed as 'habitat development'. The National Planning Practice Guidance¹ (PPG) states that permission in principle must not be granted for development which is habitat development that may either alone or in

¹ National Planning Practice Guidance - Paragraph: 005 Reference ID: 58-005-20190315

combination with other plans or projects have a significant effect on a qualifying European site or a European offshore marine site (such as the aforementioned protected sites). This is caveated to allow for developments that are necessary to the management of the site or where the competent authority has given consent, permission, or other authorisation in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017.

6. In this case, the proposal is for residential development within 10 km of the protected sites. The South-east Devon European Site Mitigation Strategy² indicates that residential development within such a distance of the protected sites adds recreational pressures by future occupiers which is harmful to their interest features. Notwithstanding any site-specific mitigation measures that may be employed to avoid any specific impacts on the flyways, the general effects of the proposal on the protected sites is considered to be significant unless mitigation measures can be appropriately secured.
7. The two forms of mitigation required are collected by different means. Whilst the Community Infrastructure Levy (CIL) may be used to provide Suitable Alternative Natural Greenspace (SANG), contributions secured by planning obligations would also be necessary to deliver secure strategic access, management and monitoring (SAMM) of the protected sites.
8. The PPG advises that the competent authority may grant permission in principle if following an appropriate assessment and after taking account of mitigation measures, it is concluded that the development would not adversely affect the integrity of the protected site. The PPG also states that planning obligations cannot be secured at the permission in principle stage. This suggests that only where the mitigation measures are secured entirely through means such as CIL, as in the example provided by the appellant of a scheme in Plymouth, can permission in principle be granted following an appropriate assessment.
9. In this instance, the mitigation contributions would ordinarily be collected through a combination of both CIL and a planning obligation. Whilst the appellant indicates that a unilateral undertaking has been provided with the appeal to pay the necessary contributions, such an undertaking would fall under the definition of a planning obligation that cannot be secured at this stage. The deferment of planning obligation requirements until the technical details stage may be acceptable for other community infrastructure, but in the case of habitats development, does not give the requisite certainty that the integrity of the protected sites will be maintained.
10. The Council has not undertaken an appropriate assessment, cognisant of the fact that the scheme cannot secure the full range of necessary mitigation measures. From my own assessment of the evidence before me, on the basis that not all the requisite mitigation measures can be secured at this stage, I conclude that the scheme is habitats development and permission in principle cannot be granted.

² South-east Devon European Site Mitigation Strategy – adopted 2014

The Principle of Development

11. Whilst permission in principle cannot be granted, in the interests of comprehensiveness, the location of the appeal site is considered in light of the Council's second reason for refusal.
12. The appeal site lies outside of any defined settlement limit with the nearest settlement being Chudleigh, some approximate 2.5km away. In planning terms therefore, it is in the countryside and this is not disputed between the parties. New housing development in the countryside is controlled by Local Plan³ Policy S22 which allows for limited affordable housing for local needs, replacement dwellings, and dwellings for a range of rural workers. The policy does not permit general open market housing in the countryside. On the face of the proposal before me, it would not meet any of the permitted development types listed in Policy S22.
13. The village of Chudleigh would appear to offer a range of necessary services on which incumbent residents rely for day to day living. I have not been advised if there are any public transport options available from the area surrounding the appeal site. Surrounding roads are narrow, of a rural nature and are generally unlit without segregated pavements. With these factors and the travel distance in mind, I can only conclude that future occupiers of the appeal scheme would rely on the use of the private car as their main source of transport. This is the least sustainable travel option.
14. I accept that journeys would be limited in number given that the proposed development would comprise up to seven dwellings. However, it is clear from my observations at the site visit that new occupiers would rely mainly on car travel to undertake their daily journeys. This is a remote rural location with no footways along the road, no street lighting and narrow country lanes. In such circumstances the accessibility credentials of the site are poor and this would lead to an unsustainable pattern of travel.
15. With the above in mind therefore, it strikes me that the principle of the proposed development would not be acceptable, accordingly conflicting with the aforementioned policy which, in general terms, seeks to promote sustainable patterns of new development as per the aims of the Framework⁴.

Other Matters

16. I note that the appellant seeks to deliver landscaping and ecological enhancements. As the proposal seeks permission in principle, these aspects are not for consideration at this stage.
17. I note that the appellant raises the potential that a fallback position would exist in the event that a separate approval is given under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015. I have considered the relevance of the separate appeals on the same site⁵ and have also considered the proposal on its own merits.

³ Teignbridge Local Plan 2013-2033 – adopted May 2014

⁴ National Planning Policy Framework

⁵ APP/P1133/W/19/3221698 and 3220824

Planning balance and conclusion

18. The Council recognise the general benefit of providing housing to supplement the local housing stock. It is not inherent in this acknowledgement that the location is suitable for such purposes. However, from a social and economic stand point, the proposal would be beneficial and would provide for up to seven new dwellings which would add to the Council's housing supply.
19. Given the scale of the development however, such a contribution would be modest and thus limited in the grand scheme. It would broaden housing choice and mix and there would also be clear additional benefits to this, such as short term employment in the construction industry and theoretically further expenditure in the district going forwards. Again however, the scale of the proposed development would accordingly limit such positive effects.
20. The appellant suggests that the appeal scheme would be for a proportion of self-build housing for which there is an alleged shortage of plots within the area. However, no mechanism can be used to secure the plots for this purpose at the permission in principle stage and I therefore attach only limited weight to this consideration.
21. As such, the benefits of the proposal do not amount to material considerations sufficient to outweigh the harm and associated conflict with the development plan and the Framework.
22. For the above reasons, the appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR