
Appeal Decision

Site visit made on 18 December 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2020

Appeal Ref: APP/K1128/W/19/3237609

Rose Cottage, Station Road, Bickleigh PL6 7AL

- 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 and Mrs C and R Hattersley against the decision of South Hams District Council.
 - The application Ref 0153/19/FUL, dated 14 January 2019, was refused by notice dated 3 April 2019.
 - The development proposed is subdivision of dwelling (5 bedrooms) into 2 dwellings (2 bed and 3 bed dwellings).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The *Plymouth and South West Devon Joint Local Plan 2014- 2034* (JLP) was adopted by the Council on 26 March 2019. This was after the submission of the planning application but before its determination. Notwithstanding the reference to the now superseded development plan policies and the emerging JLP policies within the appellant's Planning Statement submitted with the planning application, I am satisfied that the Council's decision was made on the basis of the adopted JLP policies. Both parties refer to the adopted policies within the appeal documentation. Accordingly, I have dealt with the appeal on this basis.
3. Both parties refer to the *Bickleigh Parish Neighbourhood Plan 2016 - 2034* (BPNP). The Planning Officer Report states that at the time of writing, the BPNP had been examined and was awaiting its referendum. However, the Council has since confirmed that the referendum took place on 27 February 2019 and that the BPNP was 'made' on 21 March 2019. I therefore attach full weight to the relevant BPNP policies in my decision as it now forms a part of the development plan for the area the appeal site lies within.

Main Issues

4. The Council refused planning permission for a single reason relating to the site's location and isolation from services. The Council's statement of case has provided further information about the potential adverse effects on the Tamar European Marine Site, comprising the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA, (the "European Sites"), including an Appropriate Assessment under the Habitats Regulations 2017. The planning application

officer report confirmed that, had the application been approved at the time it was originally considered by the Council, the approval would have been subject to a condition requiring a scheme to secure mitigation of the additional recreational pressures upon the Tamar European Marine Site. This would have required a pre-occupation financial contribution, in accordance with the approach developed as part of the preparation of the JLP.

5. However, the Council's statement of case refers to two recent dismissed appeals relating to sites within the '*zone of influence*' for the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA where the Inspector did not rely on such condition as a method of securing mitigation.¹ Given the relevance of these decisions to the current appeal, this matter constitutes a main issue in respect of the current appeal.
6. The appellant's statement of case refers to the comments made by Natural England in respect of the planning application, and acknowledges that the risk of increased recreational pressure would need to be addressed as advised, albeit the appellant considers that Natural England's representation would appear to be directed at more substantial development than the appeal proposal. The appellant had the opportunity to respond to the Council's statement of case, including the Appropriate Assessment, and did not submit any 'further comments', nor provide a response to the Council's proposed conditions. I have not sought further comments from the appellant on this matter.
7. Accordingly, the main issues are:
 - whether the appeal site is a suitable location for an additional dwelling house, having regard to the accessibility of services and to the reliance on private motor vehicles and to local and national planning policy for the provision of housing; and
 - the effect of the proposal on the integrity of the European sites.

Reasons

Location

8. Rose Cottage is a two-storey detached dwelling house, which, according to the appellant, was originally built as two semi-detached station workers cottages in association with the former Bickleigh railway station, and was converted to a single dwelling following the closure of the railway. It has been extended, and has an extensive garden. It forms part of a small group of similarly sized properties located away from the main settlement of Bickleigh, on a single track road which links Bickleigh to the village of Shaugh Prior. The proposal is to convert the 5-bed dwelling into 1 x 2-bed and 1 x 3-bed dwellings. No alterations are proposed to the external appearance of the dwelling.
9. The site has been the subject of a recent previous dismissed appeal decision, dated 28 November 2018, relating to an outline application to erect a single detached dwelling with double garage². This is a material consideration to be apportioned appropriate weight, since it included a similar refusal reason to that of the current appeal in respect of the isolated location of the site away

¹ APP/Q1153/W/19/3231909 and APP/Q1153/W/19/3228301

² APP/K1128/W/18/3204251

- from services, and the fostering of the growth in the need to travel by private car.
10. In determining how much weight to give to this decision, I have had regard to the differing nature of the previous appeal scheme, which related to a new-build dwelling, the limited weight afforded to the (at the time) emerging policies of the JLP, and the date of the decision, which preceded the February 2019 amendment to the National Planning Policy Framework (the Framework).
 11. Policy TTV1 of the JLP sets out the Council's development strategy across the Thriving Towns and Villages (TTV) Policy Area, supporting development which accords with the Council's settlement hierarchy of (1) Main Towns, (2) Smaller Towns and Key Villages, (3) Sustainable Villages and (4) Smaller Villages, Hamlets and the Countryside.
 12. The settlement of Bickleigh is not identified as a 'Main Town', 'Smaller Town', 'Key Village' or 'Sustainable Village', and so, for the purposes of Policy TTV1, the appeal site is located within the fourth tier of the Council's settlement hierarchy. In such locations, JLP Policy TTV1 (4) states that *'development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and SPT2) including as provided for in Policies TTV26 and TTV27'*.
 13. Policy TTV27 relates to meeting local housing needs in rural areas, such as affordable housing for local people, and is not relevant to this appeal, which relates to an open market dwelling. The Council contends that the proposal fails to comply with Policy TTV26, which relates to development in the countryside, and aims to protect the special characteristics and role of the countryside, avoiding isolated development, except in exceptional circumstances in accordance with Paragraph 79 of the Framework.
 14. The Council contends that some flexibility is built into how proposals within the countryside are considered, informed by the high level aims of strategic policies SPT1 and SPT2, and has drawn my attention to the aforementioned previous appeal decision where the Inspector concluded that development in this location would not meet the requirements of either policy, and would not deliver sustainable development. On the basis that the appeal site location has remained unchanged, the Council considers that the proposal does not accord with JLP Policy TTV1 and that the location of the site remains unsuitable for a new residential dwelling.
 15. Notwithstanding that the Council's refusal reason refers to the site's location and isolation from services, so that the development would foster the growth in the need to travel by private car, the planning application officer report confirms that the Council does not consider the site to be 'isolated' for the purposes of Paragraph 79 of the Framework, having regard to the Braintree caselaw.³ The previous Inspector did not come to a conclusion in respect of whether the site could be considered to be 'isolated' having regard to the Braintree ruling, but did conclude that the proposal would conflict with the previous adopted and emerging development plan policies which sought to ensure that residents of developments are not reliant on travel by private motor vehicles over the use of public transport and pedestrian infrastructure,

³ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

and that they should have adequate access to services and employment opportunities.

16. The Braintree Judgement, held that “31... *in its particular context in paragraph 55 of the NPPF, the word 'isolated' in the phrase 'isolated homes in the countryside' simply connotes a dwelling that is physically separate or remote from a settlement..*” and that “32....*Whether, in a particular case, a group of dwellings constitutes a settlement or a "village" for the purposes of the policy, will again be a matter of fact and planning judgement for the decision-maker.*”
17. The previous Inspector found that there are only a very limited amount of services, facilities and employment opportunities within Bickleigh itself, and that, although there is a bus stop within reasonable walking distance of the site providing a service to Plymouth, it appears to have a limited service and is accessed via a steep, narrow lane with no pedestrian footpaths. The Inspector also found that, due to the landscape, distance and condition of the route, particularly in winter, daily journeys to centres of employment via the adjacent cycle route would be difficult and unlikely. Accordingly, the use of a private motor vehicle would be likely to be the main mode of transport of any future occupants of the proposed dwelling. Following my site inspection, I find no reason to disagree with this assessment.
18. The appellant has drawn my attention to the quality and frequency of bus services to Plymouth, the location of the site in relation to Park and Ride facilities, the existence of facilities and services in neighbouring villages, and the potential growth in the provision of local infrastructure and services in association with future housing growth on the other side of Bickleigh. Notwithstanding these factors, I find that the location of the site in relation to the closest community facilities and services and employment is such that, notwithstanding the cycle route and accessibility to bus stops, the use of a private motor vehicle would be likely to be the main mode of transport of any future occupants of the proposed dwelling. Having regard to the Braintree caselaw, I find that, although the appeal site is located adjacent to residential properties to the north and south, the site is in an isolated countryside location for the purposes of JLP Policy TTV26 and having regard to Paragraph 79 of the Framework.
19. Paragraph 47 of the Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The aforementioned JLP policies are broadly consistent with the Framework aims of promoting sustainable development in rural areas by requiring housing to be located where it will enhance or maintain the vitality of rural communities and seeking to protect the character and appearance of the countryside. However, JLP Policy TTV26, whilst incorporating the criteria of Paragraph 79 of the Framework in respect of the circumstances where isolated homes within the countryside would be permitted, omits Paragraph 79 d), which allows for such development where it involves the subdivision of an existing residential dwelling. The appeal scheme comprises the subdivision of the existing dwelling into two dwellings without any external alterations. There would be no associated impact on the character and appearance of the countryside. Accordingly, having regard to my findings on whether the appeal site can be considered to be 'isolated', I find that the proposal would not conflict with Paragraph 79 of the Framework.

20. For the above reasons, having regard to Paragraph 79 d) of the Framework, I conclude that the appeal proposal would comprise a suitable location for an additional dwelling house, having regard to the accessibility of services and to the reliance on private motor vehicles and to local and national planning policy for the provision of housing. The proposal would accord with the aims and objectives of JLP Policy TTV26, to protect the special characteristics and role of the countryside, and avoid isolated development in the countryside, except in exceptional circumstances.

European Sites

21. Occupation of an additional dwelling at the appeal site could open pathways to additional recreational pressures on the European Sites and a consequential likely adverse impact on the integrity of those sites. Therefore, an Appropriate Assessment under the *Conservation of Habitats and Species Regulations 2017* (the Habitats Regulations) is required. I have undertaken this on a proportionate basis with regard to the evidence submitted by the Council.
22. The qualifying features of the Plymouth Sound and Estuaries SAC include sandbanks which are slightly covered by sea water all the time, estuaries, mudflats and sandflats not covered by seawater at low tide, large shallow inlets and bays, reefs, Atlantic salt meadows, Shore dock, and Allis shad. Those of the Tamar Estuaries Complex SPA are internationally important populations of species such as Avocet and Little Egret. Both sites are at risk of deterioration through, amongst other things, increased pressure from human recreational activities. The proposed development, in combination with other development within the zone of influence of the European sites could contribute to such pressure and, therefore, mitigation is required to ensure that such pressure is avoided or limited to such a degree that would preserve the integrity of the sites.
23. The Council has proposed to secure mitigation via a planning condition. The appellant has not objected to this approach, confirming that the risk of increased recreational pressure would need to be addressed, as advised by the Council.
24. However, such an approach would defer consideration of mitigation until after a decision had been made. As the 'competent authority', I must be certain that likely significant effects would be avoided before making a decision to grant planning permission. Without full details of the mitigation, I cannot discharge this responsibility.
25. Moreover, the evidence further suggests that mitigation may be secured by the appellant entering into a planning obligation to make a financial contribution towards a strategic mitigation solution. Without any other robust method of mitigation before me, therefore, a condition to secure mitigation would appear to be tantamount to securing a planning obligation by condition.
26. I note that the Planning Practice Guidance⁴ (PPG) indicates that it may be possible to use a negatively worded condition to secure the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure. However, elsewhere⁵, the PPG

⁴ Paragraph reference ID: 21a – 005-20190723

⁵ Paragraph reference ID: 21a – 010-20190723

advises that to deliver sufficient certainty for all parties about what is being agreed, such is unlikely to be appropriate in the majority of cases.

27. Furthermore, the PPG⁶ states that a condition securing an obligation may be appropriate in exceptional circumstances, such as where there is clear evidence that the delivery of the development would otherwise be at serious risk, as may apply in the case of particularly complex development schemes. The appeal proposal is not a complex scheme and there is no evidence that it would otherwise be at serious risk. Such concerns were shared by the Inspectors determining the aforementioned appeals in respect of sites at Tavistock and Crapstone, which the appellant has referred me to.
28. Given my responsibilities under the Habitats Regulations, and taking a precautionary approach, I find that leaving agreement over a mitigation strategy until after permission has been granted, does not give me sufficient certainty that suitable mitigation can be delivered. Therefore, following Appropriate Assessment, I find that in the absence of a suitable mitigation strategy, significant adverse effects on the integrity of the European Sites is likely. This indicates that planning permission should be refused.
29. The Council has drawn my attention to the recent public consultation in respect of the JPL Supplementary Planning Document, including an updated charging schedule based upon updated Mitigation and Management items and a Developer Contributions Evidence Base document which considers the Plymouth Sound and Estuaries European Marine Sites (EMS) Recreation Mitigation and Management Scheme. However, the preparation of this document is still at a relatively early stage, with the consultation having concluded on 6 January 2020. Therefore, it has not reached a sufficiently advanced stage to satisfactorily address the aforementioned concerns.
30. For the above reasons, I find that the proposed development would be contrary to Policy DEV26 of the JLP, which requires development to support the protection, conservation, enhancement and restoration of biodiversity and geodiversity across the Plan area, including giving the highest level of protection to European Sites. For similar reasons, the proposal would also be contrary to chapter 15 of the National Planning Policy Framework 2019 (the Framework) which seeks to conserve and enhance the natural environment.

Other matters

31. At the time of the determination of the previous appeal, the Council could not demonstrate a 5-year supply of housing sites. The Council has confirmed that, following the adoption of the JLP by Plymouth City Council, South Hams District Council and West Devon Borough Council, at the whole plan level, the combined authorities can demonstrate a 5-year land supply. This is not disputed by the appellant. In any case, this fact does not alter my findings in respect of the main issues.

Conclusion

32. I have found that the proposal would be acceptable in respect of the first main issue. However, the potential harm to the European Sites is decisive in this case, and can only lead to the appeal being dismissed in this instance.

⁶ Ibid

33. Accordingly, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR