



Appeal Decision

Site visit made on 20 October 2020

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2020

Appeal Ref: APP/P1133/W/20/3255924

The Old Mill, Beaston, Broadhempston, Totnes, Devon TQ9 6BX

- 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 Mr and Mrs D and M.S.J Densham against the decision of Teignbridge District Council.
 - The application Ref 19/02491/OUT, dated 5 December 2019, was refused by notice dated 31 March 2020.
 - The development proposed is described as '*Teignbridge Local Plan Review - Call for Sites July 2018 Site Reference b212nyy Windfall Site Erection of Three Houses*'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr and Mrs D and M.S.J Densham against Teignbridge District Council. The application is the subject of a separate decision.

Procedural Matter

3. The planning application was submitted in outline with all matters reserved and I assessed the appeal on that basis.

Main Issues

4. The main issues are:
 - whether or not the site is suitable for the proposal, having regard to development plan policy for the supply of housing;
 - the effect of the proposal on biodiversity, including protected species; and,
 - whether or not the proposal would be suitably drained.

Reasons

Suitability of the site

5. Policy S22 of the Teignbridge Local Plan 2033-2033 (adopted 2014) (TLP) defines land outside of a closed list of settlements, given within Policy S21, as the open countryside. The site relates closely to the built form of Beaston and logically forms a peripheral part of the hamlet. Nonetheless, Beaston is not within Policy S21's settlement list, which leaves the site, for planning purposes, to be within the open countryside.

6. In such locations, housing is supported by Policy S22 if certain circumstances are present. Of particular relevance to this appeal, this includes the provision of affordable housing for local needs.
7. The appellants intend for the proposed houses to accommodate their children, two of whom currently reside with them at The Old Mill, and their families. However, there is nothing before me upon which I can guarantee this eventuality, nor is there any mechanism, such as a legal agreement, which would secure the status of the houses as affordable housing. They could equally be sold on the open market, without addressing any local need.
8. Reference has been made to a planning permission in Beaston under Ref TDC 10/03120/FUL. However, no further information has been provided. The appellants have also referred to several barn conversions in the area¹. It is not lost on me that these buildings occupy more isolated rural settings than Beaston and indeed are further from Broadhempston than the appeal site.
9. Yet, each case falls to be considered on its own individual merits and, from the limited information I have, these are examples of Permitted Development which are beyond the scope of the TLP. Similarly, the development raised by an interested party² appears to have been granted off the back of one such scheme. These other sites therefore add little support for the appeal proposal.
10. I also understand that the appeal site has been submitted as a candidate for housing under a 'call for sites' exercise, although the Council appear to have reached a view that it would not be appropriate at this stage. Either way, as this is an ongoing situation relating to the future status of the site, it does not influence my reasoning on this main issue.
11. Consequently, I conclude on this issue that the site would not be suitable for the proposal, having regard to development plan policy for the supply of housing. It would conflict in this regard with Policy S22 of the TLP.

Biodiversity

12. Circular 06/2005 advises that the presence of a protected species is a material consideration when a development proposal would be likely to result in harm to the species or its habitat. I am required by the Habitats Regulations³ to consider the potential effect on protected species in such cases.
13. The site is within the South Hams Special Area of Conservation (SAC) Bat Landscape Connectivity Zone which indicates to me the potential for impacts upon this protected species. The Council's Biodiversity Officer has also found the prospect of other protected and priority species and/or habitat to be present and there is no evidence that this should be disputed. Whilst a scheme for development of the site around 2010 may have been accompanied by a habitat appraisal, its findings would be of negligible value in the here and now.
14. There is therefore a reasonable likelihood of protected species and/or priority species and their habitats being present and affected by the development. As no detailed ecological appraisal or surveys have been submitted, I cannot ascertain the potential effect of the proposal in this regard. I am also unable to

¹ Refs 2558/16/PMD, No1731/16/PDM and an unreferenced site at Lamington

² Ref 20/00145/FUL

³ Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017

consider my responsibility as competent authority regarding the prospect of a European Protected Species (EPS) License being granted. These are matters that require resolution even at this outline stage.

15. As such, I cannot rule out that the proposal would have an unacceptable, harmful effect on biodiversity, including protected species. The proposal would therefore conflict with the biodiversity aims of Policy EN11 of the TLP.

Drainage

16. The Council is concerned, in the absence of a surface water drainage strategy, that it has not been demonstrated that surface water from the development would be disposed of in a manner that does not increase flood risk elsewhere. However, the site is large, and it is likely that there would be expansive land available to soakaway any increased surface water runoff from impermeable surfaces. On this basis, this is a matter that could be dealt with by way of a condition, and the scheme would accord with Policy EN4 of the TLP.

Other Considerations

17. The appellants have submitted evidence which contests that Policy SS2 is out-of-date. It may be that the policy is up for future review and it is true that it predates the latest version of the Framework. However, the weight it attracts does not turn on these factors. Instead, pursuant to Paragraph 213 of the Framework, due weight should be given to it according to its degree of consistency with the Framework.
18. Policy S22 looks to direct development to the best serviced and most accessible settlements, having regard to landscape character, green infrastructure, and overall travel patterns. This is consistent with the aims of the Framework to maximise sustainable transport solutions, and to recognise the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services.
19. What Policy S22 does not do is prevent windfall housing in rural places which are beyond the services within its named settlements, but which are equally not isolated, like Beaston. Nor does it look to thwart development in areas where it would enhance or maintain the vitality of rural communities. Rather, it requires housing in such locations to be affordable for local needs. This is consistent with Paragraph 77 of the Framework which requires rural policies to be responsive to local circumstances and support housing that reflects local needs. As such, Policy SS2 is not out-of-date and full weight should be attributed to the proposal's conflict with it in this case.
20. The appellant has also referred to the emerging Teignbridge Local Plan Review. However, the stage of preparation of this document has not been explained to me, and it has therefore not been a determinative factor in my reasoning.

Planning Balance

21. Planning law requires for proposals to be determined against the development plan unless material considerations indicate otherwise. The scheme would conflict with development plan policy for the location of housing and would undermine the Council's plan-led approach, contrary to Paragraph 15 of the Framework. I cannot rule out that there would be harm to biodiversity,

- including protected species. These issues attract significant weight and bring the proposal into conflict with the development plan when read as a whole.
22. In its favour, the government is seeking to significantly boost the supply of housing and the scheme would provide three dwellings to the local supply. In doing so, it would likely support the vitality of services and facilities in the area through increased footfall and may enrich the vitality of the community itself. However, given the small scale of the proposal, these benefits attract only modest weight, and are outweighed by the adverse impacts identified above.
23. I have also had regard to the evidence pertaining to the personal circumstances of the appellants and their family, the Planning Practice Guidance in relation to housing for older and disabled people, and my responsibilities under both the Human Rights Act and the Public Sector Equality Duty contained in the Equality Act 2010 (PSED).
24. I understand that the appellants currently live at The Old Mill with two of their sons, who provide them with any necessary support. There is no evidence that the dismissal of this appeal would lead to or continue circumstances where either the appellants or members of their wider family would be homeless, or that the current family situation would be unable to continue. As such, there would be no interference that would give rise to a violation of human rights.
25. The PSED sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. As I have identified above, the current circumstances of the appellants and family members would not change if I dismissed the appeal. On the other hand, I cannot be certain that the family's intentions would be realised if the appeal were to be allowed. As such, it does not follow from the PSED that the appeal should succeed.
26. Consequently, taking all matters raised into account, including the referenced written ministerial statements, there are no other considerations, including the Framework, that outweigh the conflict with the development plan.

Conclusion

27. For the reasons outlined above I conclude that the appeal should be dismissed.

Matthew Jones
INSPECTOR