The Planning Inspectorate

Appeal Decision

Virtual Hearing Held on 7 October 2020
Site visit made on 16 October 2020

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/Q1153/W/19/3230781
Land north of A30, Whiddon Down

- 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 JW Mann Ltd against the decision of West Devon Borough Council.
- The application Ref: 2701/18/FUL, dated 13 August 2018, was refused by notice dated 27 February 2019.
- The development proposed is a new shop and ancillary café with supporting secondary areas consisting of storage, WCs, offices and kitchen space (resubmission of 1255/18/FUL).
- This decision supersedes that issued on 12 November 2019. That decision on the appeal was quashed by order of the High Court.

Decision

1. The appeal is dismissed.

Procedural and preliminary matters

2. Following a High Court challenge to a previous Inspector's decision dated 12 November 2019, this appeal is to be redetermined on the basis that the whole case is considered afresh. The quashed decision is treated as if it had not been made and is incapable of having any legal effect. In redetermining the case I have reviewed all the relevant planning issues and representations and not the previous appeal decision. The description of development in the banner heading above has been taken from the Council's decision notice, which removes reference to a 'farm shop' that was given on the application form.

3. Prior to the Virtual Hearing (VH) I was able to see the appeal site from public land and note the relationship between it and various local shops, villages and the town centre of Okehampton. After the VH had closed, I undertook a site visit on an access-required basis with the landowner's consent. The main parties were made aware of these visits and raised no objection to this approach.

4. The development plan comprises the Plymouth and South West Devon Joint Local Plan 2014 – 2034, adopted March 2019 (JLP). In July 2020, the Plymouth and South West Devon Joint Local Plan 2014 – 2034 Supplementary Planning Document was adopted (SPD), the purpose of which is to amplify and give guidance on the implementation of the policies of the JLP.

Main Issues

5. The main issues in this appeal are:
   - whether the proposal would be in a suitable location, having regard to the sustainable settlement hierarchy of the JLP; and,
   - the effect of the proposed development on the character and appearance of the area.

Reasons

The settlement hierarchy and suitability of the location

6. The appeal site comprises almost one hectare of rectangular-shaped field situated just north of the A30, off the A382 junction and Hittisleigh Road. For planning policy purposes, the appeal site is located in the Thriving Towns and Villages Policy Area (TTVPA), outside of a settlement and within the countryside.

7. The JLP follows a spatial approach in order to, amongst other things, minimise development in sensitive locations where high-quality natural environments could be harmed. JLP Policy TTV1 seeks to prioritize growth through a hierarchy of settlements, placing the countryside in the fourth tier, wherein development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities, including in respect of Policy TTV26.

8. For the TTVPA, Policy TTV2 seeks to deliver a sustainable pattern of development and makes some provision for low-level growth in tiers three and four of the settlement hierarchy. Sub-criterion Policy TTV2.2 supports development that includes the growth and expansion of rural businesses and enterprise, albeit subject to site-specific constraints and opportunities, and the need to respond to the established settlement hierarchy and to protect the natural environment[1].

9. Policy DEV15 supports proposals in suitable locations that improve the balance of jobs in rural areas and diversify the rural economy. During the VH, the parties agreed that the proposed development would not constitute a 'farm shop' for the purposes of provision 5 of Policy DEV15. There was subsequently a divergence of opinion as to whether or not provision 8 of Policy DEV15 would be applicable in this case. I believe it would. Indeed, my reading of Policy DEV15 is that it provides support for the growth of local employers and businesses to diversify the rural economy and improve the balance of jobs in rural areas, but that support will only be given to proposals in suitable locations. It is through the four points listed under provision 8 of Policy DEV15 that the suitability of the development proposal's location is gauged.

10. As paragraph 79 of the Framework seeks to avoid the development of isolated homes in the countryside, the circumstances a) – e) are not applicable in this case. Policy DEV15.8 iv, however, refers to isolated new buildings, not just housing. Turning to Braintree[2] and the meaning of the word 'isolated' during the VH, the appellant conceded that, in the sense of it being separate from a

[1] SPD paragraph 11.23 TTV.2.3 – Rural business and enterprise
[2] Braintree DC v SSCLG et al [2017] EWHC 2743 (Admin)

settlement, the proposal would, indeed, be isolated. I agree. Therefore, whether or not it would facilitate job creation and diversification of the rural economy, the proposal would not avoid the development of an isolated new building, which leads to conflict with Policy DEV15 and the implication that the proposal would not be in a suitable location.

11. In seeking to provide retail and town centre uses in appropriate locations, Policy DEV16, requires main town centre uses be supported by a sequential test, the need for which is disapplied for 'small scale rural development'. That the proposal would involve development of a main town centre use[3] in an out-of-centre location is not in dispute. It is contended, however, that the scheme would be 'small-scale' for the purposes of Policy DEV16 and paragraph 88 of the Framework, negating the requirement for a sequential test. The rationale behind this contention hinges principally on the proposed size of the retail area, including reference to the retail space thresholds within the Sunday Trading Hours Act.

12. There is no definition in the JLP, PPG or the Framework of 'small scale rural development'; however, neither is there reference to an assessment of the quantity of retail space as being an appropriate way to gauge whether a rural development would be small-scale. However, within the SPD[4] it is explained that the sequential test requirement applies irrespective of the amount of floorspace proposed and that a sequential test should focus on the use class or use classes being sought. Furthermore, the PPG[5] refers to the suitability of sites and a given proposal.

13. In my judgement and reading of Policy DEV16, the SPD and the PPG, the assessment of whether a proposal would be small-scale rural development should logically account for more than just the retail space or floor space, but for the sum of its parts. The given proposal would occupy almost one hectare of land and introduce an integrated offer comprising retail, café, storage, and more general rest facilities onto the site. Even with a restrictive condition imposed on size and origin of goods sold, the retail element would sell a broad range of convenience and comparison goods. Furthermore, it is anticipated that the proposal would attract in the region of 140 vehicles a day or approximately 364 people to an offer that would be open for at least 9 hours a day, most days of the year. Taking all of this into account, I do not consider the appeal scheme would constitute small-scale rural development for the purposes of Policy DEV16 and the Framework.

14. The PPG[6] also sets out that the use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements, which mean that they may only be accommodated in specific locations. Robust justification will need to be provided where this is the case, and land ownership does not provide such a justification. Even if the appeal site would be well-placed to take advantage of the people travelling through Devon along the A30, whether commuters or tourists, the particular market and locational requirements of the development have not been convincingly substantiated.

[3] As defined in the Glossary of the Framework
[4] paragraphs 5.27 and 5.30
[5] Government's Planning Practice Guidance paragraph 011 Reference ID:2B-010-20190722
[6] PPG paragraph:012 Reference ID: 2b-012-20190722

15. I note that the Council had initially concurred with the appellant's view that a sequential test would not be required on the basis of quantity of retail space sought, and that the absence of a sequential test was not one of the Council's reasons for refusing the proposal. Nevertheless, I believe a sequential approach would be applicable to the appeal proposal; the absence of one fails to establish whether a sequentially preferable site exists. Consequently, the proposal fails to accord with Policy DEV16.2.

16. In seeking to avoid significant adverse impacts on the vitality and viability of an existing centre, Policy DEV16 further requires development in out-of-centre locations be accompanied by an impact assessment where the floorspace exceeds, in the TTVPA, 250 square metres[7]. The PPG[8] defines gross retail floorspace (or gross external area) as the total built floor area measured externally which is occupied exclusively by a retailer or retailers, excluding open areas used for storage, display or sale of goods.

17. The appellant considers that quantum of retail floorspace would fall below the 250 square metre-threshold, taking into account the area which would be occupied exclusively by the retail element. The appeal proposal in its entirety, however, would form a single integrated offer, occupied exclusively by one retailer. With this in mind, and notwithstanding that the Council had indicated agreement with the appellant's floor space calculations, I consider it would be disingenuous not to measure the total built floor area of the premises as a whole, taking into account the external measurement of the assimilated retail element, ancillary café and supporting secondary areas. Had this been done, the gross retail floorspace of the development would certainly be more than 250 square metres, indicating an impact assessment should accompany the proposals.

18. The appellant did produce a Retail Impact Assessment[9] (RIA) in support of the appeal scheme, but the impact considerations refer to the nature and scale of a new shop of 247 square metres. As above, the appeal proposal would be more than just the shop. Even if the shop element would be commensurate with the size of a local convenience shop, the PPG advises that impact should be assessed on a like-for-like basis in respect of that particular sector and that retail uses tend to compete with their most comparable competitive facilities[10].

19. The assumption is put forward in the RIA that around 25% of the trade would be from local tourists and residents and would not lead to any noticeable change in turnover of existing shops. However, if the total floor space and café plus retail element have not been assessed together, I do not consider that the conclusions within the RIA can be relied upon.

20. Although not a 'farm shop' in respect of Policy DEV15, the proposal has been predicated on selling produce from farms and that the imposition of a condition would ensure 75% of the goods sold would be produced or reared from the local area. The RIA assessed the impact of the proposal taking into account the likely range of goods to be sold and that, being sourced from the 'local Devon offer', would differ from many local shops. When the Planning Statement was written in August 2018, there had been expressions of interest from some 28

[7] Policy DEV 16 paragraph 3.ii
[8] Government's Planning Practice Guide paragraph 015 Reference ID: 2b-015-20190722 Footnote
[9] ID Planning Retail Impact Assessment, June 2019
[10] Paragraph: 015 Reference ID: 2b-015-20190722

suppliers. It is unclear whether all of those suppliers listed would fall within the 'local area' as defined in a suggested condition. That aside, during the VH the appellant confirmed that initial discussions with the listed suppliers had not been meaningfully progressed. I note the appellant's reluctance to building up undue hope, especially in the context of planning uncertainty. However, on the evidence before me, I am not satisfied that it can be assumed that 75% of the retail value of the goods to be sold would come from the local area. This, in turn, casts further doubt over whether the findings of the RIA are reliable.

21. Furthermore, the existing shopping patterns referenced in the RIA have taken account of a 2011 household shopping survey. Whilst the same survey may have provided the evidence-base for the JLP, the current and still unfolding Covid-19 pandemic may have significant implications for local businesses, centres and shopping habits. It is my judgement that the absence of significant adverse impacts of the proposal on the vitality and viability of an existing centre has not been demonstrated.

22. Even if I had been satisfied that the proposed development would not have a significant adverse impact on the vitality and viability of an existing centre, I still judge that such a finding would not negate the need for the adoption of a sequential approach as a first step. Moreover, the PPG is clear that compliance with sequential and impact tests does not guarantee permission will be granted; but failure to undertake either could itself constitute a reason for refusing permission. I therefore find that the proposed development would fail to comply with Policy DEV16, the overarching spatial strategy of the JLP, and paragraph 86 of the Framework.

23. Drawing all the above together, on the first main issue, I find that the appeal proposal would advance an isolated building and not small-scale rural development in the countryside. It has also not been convincingly established that a sequentially preferable site could not accommodate the proposals or that there would not be significant adverse impact on the vitality and viability of an existing centres. In my judgement, the proposal would not be sustainable development and divergent to Policies TTV1 and TTV2 the principles of sustainable development of JLP therefore not in a suitable location.

Character and appearance

24. There was no objection to the proposal from the Council's landscape officer; nevertheless, concerns have been raised by interested parties as to the effect on the character and appearance of the local landscape and countryside. JLP Policy TTV26 seeks to protect the special characteristics and role of the countryside. Amongst other things, Policy DEV23 seeks to ensure development proposals are located and designed to respect scenic quality, reinforce local distinctiveness, and conserve and enhance landscape character. Policy DEV20 requires development proposals contribute positively to, amongst other things, landscape. The Framework also recognises the importance of the character and beauty of the countryside and seeks to ensure decisions contribute to and enhance the natural and local environment.

25. Approaching the appeal site from the infrastructure of the A30, there is a notable absence of development, formal footways or street-lighting. Indeed, turning onto the narrow country lane from which the appeal site would be accessed, the mature hedgerow boundaries and far-reaching views over a wider gently rolling farmland landscape contribute to a very definite rural

character. Notwithstanding the proximity of the A30 and junction infrastructure, the verdant, open, and agrarian nature of the appeal site causes it to synthesise wholly with its distinctly rural context.

26. Even if the appeal site had previously been used for highways storage or agricultural research, the remains of any former permanent structure have now blended into the landscape. I therefore do not consider the site falls under the definition of previously developed land for the purposes of the Framework.

27. The design and material palette of the proposed new building would be of high-quality. Even so, and despite any aesthetic reference to agricultural architecture, the proposed building would not be a farm building, nor would it be related to an agricultural holding. Rather, the appeal proposal would be the development of a relatively substantial, isolated building, as well as courtyard, service yard, access road and 50 parking spaces. In turn, the development would likely be accompanied by numerous vehicle movements, creating town-centre type development in the countryside. The proposal would consequently advance isolated development and an alien form of activity that would be fundamentally at odds with the characteristics and role of the countryside.

28. The SPD[11] explains that the policy tests of Policy TTV26 are necessarily high and emphasise that development in the countryside should occur only in 'exceptional circumstances'. Although the appellant had conceded the proposals would be isolated, the Council stated during the VH that it did not consider the provisions of Policy TTV26.1 should be engaged in this case. Be that as it may, I see no reason why Policy TTV26.1 should be disapplied, taking into account its premise would be to avoid isolated development in the countryside. The proposals have not been predicated on, nor would they satisfy, any of the 'exceptional circumstances' under which isolated development in the countryside would be permitted. Therefore, in my judgement, the proposal would be in conflict with the provisions of Policy TTV26.1.

29. Even disapplying Policy TTV26.1, the SPD[12] is clear that any development proposal located outside the main or smaller towns, key or sustainable villages, would need to demonstrate conformity with the relevant provisions of Policy TTV26.2. The proposed development would not comply with any of the provisions i - vi and so does not comply with Policy TTV26 and thereby also fails to satisfy JLP Policy TTV1, insofar as it only permits development in the countryside that accords with Policy TTV26.

30. To some degree, mature hedgerows and the local topography would assist in concealing the proposal; while supplementary planting, estate fencing, grass carparking, wildlife areas and a sensitive lighting scheme could lessen the overall impact. In my opinion, the mitigation and enhancement measures proposed would not eliminate the harmful impact the scheme would have on the rural character and appearance of the site and its surroundings. Although the appeal site would not affect the landscape and scenic beauty of Dartmoor National Park, conflict arises with JLP Policies TTV26, DEV20 and DEV23, as well as paragraphs 127 and 170 of the Framework. I therefore consider that the proposed development would have a harmful effect on the character and appearance of the area.

[11] SPD paragraph 11.44
[12] SPD paragraph 11.55

Other matters

31. Ecological surveys indicate that there is a reasonable likelihood of dormice, a European Protected Species (EPS), being present at the appeal site and that they would be adversely affected by the development proposals. The appellant has suggested mitigation measures that would be necessary and effective through the imposition of conditions to protect the EPS. This is not in dispute.

32. Decisions about whether a mitigation licence can be granted are the responsibility of Natural England (NE), who advise that if planning permission is required it should be obtained before an application is made for a mitigation licence. NE can only issue a mitigation licence if three tests have been met.

33. Had I been minded to allow the appeal and grant planning permission, I would have had regard to the three derogation tests that are applicable in NE's determination of a mitigation licence. During the VH, the Council conceded that if planning permission was to be granted, the development would have been one that complied with planning policies and guidance, and likely to satisfy the derogation tests. However, my decision to dismiss this appeal hinges on issues relating to the location of the appeal site, non-compliance with policy and considerations outside of EPS and ecology. On this basis, the matter of the EPS and NE mitigation licence is not determinative.

34. Had I been minded to allow the appeal, I am satisfied that detailed matters relating to the access amendments and precise visibility splays, cycle stands and staff shower facilities, could have been dealt with by appropriate 'Grampian' conditions.

Planning balance

35. The proposal would provide social and economic benefits, not least through the construction phase, the generation of direct and indirect employment and payment of business rates. I have not been provided with substantive evidence of local job needs or how future employment opportunities would demonstrably be secured for local workers. Although there would clearly be benefits associated with the creation of jobs, the absence of a sequential test diminishes the weight I can attach to these benefits to a modest level.

36. The weight I attach to the benefits of the development providing a showcase for locally produced food and supporting local producers is diminished to a modest level by the absence of meaningful evidence of the extent of local supply chains or substantive evidence of how the needs of farms in the local area would be met or diversified.

37. In large part, supplementary landscaping would be as mitigation for the proposed development. However, particularly in respect of dormice habitats, enhancements would go beyond mitigation and I attach modest weight to this as a benefit of the scheme. Whilst not weighing against the proposed development in the overall planning balance, any absence of harm in respect of the surrounding highway network, nationally protected landscapes and living conditions do not weigh in its favour.

38. I have found that the appeal scheme would conflict with the JLP Policies TTV1, TTV2, TTV26, DEV15, DEV16, DEV20 and DEV23. Reading the development plan as a whole, the policy reason for not supporting new development in isolated countryside locations is that it would be unstainable and would

undermine the character and appearance of the countryside. In my judgement, the proposal would not be sustainable development and would not be in a suitable location, contrary to the development plan read as a whole and to the Framework. This carries considerable weight against the proposal.

Conclusion

39. I am mindful of the favourable support for the scheme from Council Officers and a previous Inspector. In light of being presented with more detailed evidence and considering the planning matters afresh, I am not precluded from taking a different view. Although I am aware of the support for the proposal from, amongst others, the South West Tourism Alliance, and the contention that the Covid-19 situation has placed increased scrutiny on food supply chains and sourcing of local produce, I do not find there to be other material considerations to justify making a decision other than in accordance with the development plan read as a whole. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Mann – Appellant
James Ellis –Director Rural Solutions (Agent)
Jeremy Williams – Director ID Planning

FOR THE LOCAL PLANNING AUTHORITY:

Anna Henderson-Smith – Senior Specialist, Development Management WDBC & SHDC
Phillip Baker – Specialist, Placemaking WDBC & SHDC
Christine Reeves – Director Reeves Retail Planning Consultancy

INTERESTED PERSONS:

Liz Gibson
David Campbell
Rupert Burnell Nugent
Catherine Gillard
Paul Ridgers (WDBC Ward Member)
Graham Parker
Blue Ramsey

DOCUMENTS SUBMITTED DURING THE HEARING
1 Natural England Standing Advice
2 JLP Policy TTV1
3 JLP Policy DEV29