



Appeal Decision

Site visit made on 25 January 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2021

Appeal Ref: APP/P1133/W/20/3261795

Devon View, Road From Heath Cross To Higher Hare, Whitestone EX4 2HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Turner of South West Refrigeration Ltd SSAS against Teignbridge District Council.
 - The application Ref 20/00230/FUL, is dated 4 February 2020.
 - The development proposed is the change of use of agricultural land and buildings to commercial use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is made against the non-determination of the application by the Council. The Council has confirmed that if it had determined the application it would have been refused for two reasons. In summary, firstly, because of the adverse effect of the proposal on the character and appearance of the area, within the Area of Great Landscape Value (AGLV), and secondly, that there is no clear evidence why a countryside location is essential to operate the business and with the scale of the development it is not considered to be appropriate to the accessibility of the site by public transport, cycling and walking.
3. I have used the description of the development from the application form, as while an alternative wording, specifying use classes, has been used on the decision notice and on the appeal form, it does not appear that this revised description had been agreed by the appellant. I have had regard to the mix of Class B1 (Business), B2 (General Industrial) and B8 (Storage or Distribution) uses which the appellant has referred to in the submissions.
4. I am aware of the recent revisions to the Use Classes Order and the new Class E (Commercial, Business and Service)¹. However, transitional arrangements require that if an application has been submitted under the earlier list of use classes then the application must be determined by reference to those uses and use classes.

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Main Issues

5. The main planning issues are:

- the effect of the development on the character and appearance of the area, having particular regard to the location within the AGLV, and
- whether the development plan supports the proposal in this location, in particular having regard to accessibility of the site by a range of transport modes.

Reasons

Character and appearance

6. The appeal site is located within the AGLV, which is a locally important landscape identified in the Teignbridge Local Plan 2013-2033 (adopted 2014) (the Local Plan). Additionally, the evidence indicates that the site is within the area identified² as the Exeter Culm Slopes Landscape Character Area, an area characterised as being: strongly rural, displaying a strong sense of remoteness and tranquillity; with key characteristics that include, dispersed settlement pattern of farmsteads and hamlets, often with strong vernacular character; and described as a high quality landscape due to its elevated, tranquil largely unspoilt character.
7. In terms of the policy approach, Policy EN2A of the Local Plan seeks, amongst other things, in particular to conserve and enhance the qualities, character and distinctiveness of the AGLV. This is consistent with the National Planning Policy Framework (the Framework) which requires decisions protect and enhance valued landscapes and recognise the intrinsic character and beauty of the countryside.
8. The site itself lies next to the road at a highpoint on the ridge between Whitestone and Tedburn St Mary. The appeal site sits elevated above the road and from within parts of the site there are extensive and wide ranging views over the wider landscape stretching in a broadly south direction. At the rear of the site, there are boundary trees and hedging although there are still some views through the screen towards the ridge across the valley to the north and the surrounding countryside. The site is located amongst attractive countryside, with some sporadically located dwellings, farmsteads and other buildings, and displays many of the positive features that are associated with the Exeter Culm Slopes Landscape Character Area.
9. From parts of the road, near the sloping access into the site, there are views of part of the end of one building and elements of the southern elevation of the other farm building within the site. These buildings are generally of a size and appearance of farm buildings that are typically found within the landscape. The surroundings to the buildings are somewhat overgrown and the trees and hedges around parts of the boundaries provide some screening. At the present time the site has a low key and fairly neutral presence within the landscape and generally merges with the surrounding countryside. I consider that this would, in all probability, still be the case if the site was in active farming use because it would be typical to see this type of farm building and associated agricultural activity in the landscape.

² In the 2014 Teignbridge District Landscape Character Assessment

10. The plans show that the access to the site would be widened and with the addition of a gate that would reflect a more commercial use of the site. A sight line would be provided by creating a visibility splay across part of the frontage. These changes would result in a greater prominence and more suburban appearance to the entrance area to the site within this part of the road.
11. The present farm yard area would be extended at the rear and along a section of the broadly eastern boundary into land that is presently grassed areas, increasing the overall footprint of the site. Car parking would be provided on an elevated section of the site towards the front. An external storage area would extend to the rear and it appears that this area could be used for the storage of bulk tanks, silos and containers as well as pallets stacked potentially up to 3m in height³. Hard surfacing would be laid fairly extensively around the site. The combination of these changes, encroaching beyond the present yard area, would change the low key appearance of the site and would create quite an urbanising and intensive form of development.
12. The buildings would be reclad and have mainly metal sheeted elevations. Windows and doors would be added to the elevations and together with what appears to be roller shutter doors. This would lead to quite an industrial appearance to the buildings themselves which would have little affinity with the rural character and local distinctiveness of the area.
13. Furthermore, the plans show that the buildings would have quite a number of rooflights. At some times of the year during early morning and at dusk this is likely to lead to some noticeable light spillage from the rooflights. To ensure health and safety, there is likely to be a need for some external lighting around the site given the movement of vehicles and pedestrians around some of the communal areas. At the times when the lighting would be required, this would add to the presence of the commercial use on the site and would erode the rural character and tranquillity of the area. I do not consider that this adverse impact could be satisfactorily addressed by the requirements of a planning condition, even with the level of detail suggested by the Council in the draft condition, because to be effective it would be necessary to so minimise external light spillage that this would be likely to limit operational use of the site.
14. There is already some reasonably good landscaping around the boundaries of the site and this would be supplemented by the proposed landscaping scheme, including hedgebanks and planting. However, I consider that many of the proposed changes and additions that would result from the scheme, which have been highlighted above, would still be perceptible from outside the site, either from some areas directly in front of the site or from some sections of the surrounding countryside, including the land across the valley to the north. The views would be localised and filtered but I consider the use of the site would appear to be quite intensive and the effect of the proposal would lead to an industrial appearance and feel to this elevated and rural site. This would erode the present low key and fairly tranquil nature of the site within its rural setting. As a consequence, there would be harm to the landscape quality of the AGLV and undermine key characteristics of the Exeter Culm Slopes Landscape Character Area, including aspects of its tranquil largely unspoilt character.

³ As indicated in the appellant's response to the Council's suggested planning conditions.

15. In coming to this judgement I have had regard to the advice of the Council's Landscape Officer, including the objection on landscape grounds, together with the analysis and comments of the appellant on landscape issues.
16. In the light of the above analysis, I conclude that the proposed development would harm the character and appearance of the area, in particular the landscape quality of the AGLV. Accordingly, the proposal would conflict with Policies S1A, S1, S2, EC3 and EN2A of the Local Plan and the Framework which seek, notably in these respects, to conserve and enhance the qualities, character and distinctiveness of the AGLV.

Location

17. The Local Plan sets out the strategy and requirements for development across the district. In particular, Policy S1 lists Sustainable Development Criteria which development is required to perform well against, taking account of the social, economic and environmental benefits of the proposal, and its scale and magnitude of impact and any associated mitigation. These development criteria include accessibility by walking, cycling and public transport for main travel purposes, including work.
18. In relation to rural employment, Policy EC3 of the Local Plan is generally encouraging for all types of business use in the countryside as a matter of principle. This is providing, amongst other things, the scale of employment is appropriate to the accessibility of the site by public transport, cycling and walking.
19. The Local Plan approach to development in this respect is in general accordance with the policy in the Framework which explains that the planning system should actively manage patterns of growth in support of a range of objectives to promote sustainable transport. These objectives include identifying and pursuing opportunities to promote walking, cycling and public transport use, whilst acknowledging sustainable transport solutions will vary between urban and rural areas.
20. This is also reflected in the Framework policy to support a prosperous rural economy which seeks to support the growth and expansion of all types of businesses in rural areas. This policy acknowledges that sites to meet local business needs may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances, the Framework policy, as set out in paragraph 84, is that it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits opportunities to make a location more sustainable.
21. In this case, I have carefully considered the circumstances which have been advanced to justify this site and all the related information, such as the size and frequency of vehicles which would need to visit and the number of staff who would be based on the site. The company is presently located on a purpose built industrial estate in Exeter and has out grown its premises and wishes to expand. I note the background the company provided in the original application which includes the information that it specialises in the servicing and maintenance of farm cooling equipment throughout the southwest of England and also the supply and installation of bulk milk tanks and ancillary equipment throughout England and Wales.

22. The business activities predominantly support the dairy industry but given the success of the business when based within a city business park I do not consider that a rural location is essential. Nevertheless, that the business does not need to be in a rural location is not determinative because policy supports the growth and expansion of all types of business in rural areas.
23. The site is located away from any settlement in open countryside. At my site visit, I drove along roads to the site, including from Exeter via Whitestone and from the A30 via Tedburn St Mary. I consider that the site is a reasonable distance along these rural roads from the main A class road network, such as the A30. The evidence sets out the likely delivery and work related vehicle movements that would likely attend the site from time to time and these vehicles would be required to travel along these rural roads to access the site. I am not satisfied that the location would minimise the length of these journeys, compared with other sites, as the company is serving at least a regional customer base rather than an immediate local one. Consequently, the evidence does not clearly demonstrate that the location would assist with reducing carbon emissions from vehicles and therefore support efforts to tackle climate change.
24. In respect of staff working on the site, as there are only a scattering of dwellings in the area it is unlikely that many workers would be able to conveniently walk to the site. In terms of public transport, there is a bus stop at Heath Cross, however, this is further up the road and it would be necessary for workers to walk along the road which has no footway, is curving in nature and without street lights. Given the frequency of bus services and the location of the bus stops in relation to the site, I do not consider that, in all likelihood, public transport would be a realistic and convenient prospect for most office based workers to access the site on a regular basis.
25. In respect of cycling, although the road in front of the site is a Sustrans Route, with the rural nature of the road from Exeter and others in the wider area linking to villages and other towns, cycling to the site for work on a regular basis would be unlikely to be an attractive option to access this elevated location for most people.
26. It follows that for workers based at the site there would likely to be a dependence on the private vehicle to access the site and the site would have poor accessibility by other modes such as walking, cycling and public transport. In this way the location of the site, having regard to the submitted details regarding the scale of the employment activity which would take place, would not accord with the requirements of planning policy for sites to operate from locations which would allow the option of a choice of transport modes, even accepting the rural location.
27. Accordingly, the scheme would not accord with the locational approach in the Framework for rural businesses, as set out in paragraph 84, as it would not be possible to exploit opportunities to make the location more sustainable and the proposal would not be sensitive to its surroundings, for the reasons explained under the first main issue.
28. I do not consider that seeking to route business traffic along certain roads would address this issue or that the potential for a Travel Plan, based on the evidence before me, has been demonstrated would be effective in addressing the accessibility issues and the dependence on private vehicles.

29. It is argued that the site would be preferable to the Marsh Barton location because of the congestion in that area and therefore the appeal site would result in less carbon emissions. However, that is a purpose built industrial estate with an accompanying urban road system and is likely to be closer to centres of population that would assist workers with accessing the site by foot and bicycle, and with links to the public transport network. I am not, therefore, persuaded that the appeal location would be beneficial compared to established industrial sites, some of which have been highlighted in representations from local residents.
30. I have noted the list of alternative sites for relocation and expansion that were investigated and have not been able to be progressed for various reasons. It seems that the appellant has made a business decision to purchase rather than rent a site and this may have limited the available options. The list of alternative premises is not so extensive and the related evidence not so detailed that it clearly demonstrates that the appeal site is effectively the main realistic option available. Consequently, I attribute this information limited weight in the overall considerations.
31. The proposal is advanced on the basis that the site would be designed and operated specifically for the appellant company, however, it would not be appropriate to condition any permission to this effect in any approval⁴.
32. I have based my judgement on the submissions before me, however, I am also conscious that if the scheme was approved the permission would run with the land and other users could operate from the site in the future. Even if it was appropriate for parts of the site to be restricted by planning condition to identified use classes and only a single operator was allowed on the site, the scheme would still include a B8 use. Consequently, the site would have the potential to be operated as, in part, a storage or distribution use. There would be reasonably sized internal and external storage areas available. The distribution element could lead to a different pattern of traffic movements if operated by a different company from that envisaged in the present proposal, potentially resulting in increased carbon emissions from vehicles accessing this location. This adds to the concerns that I have set out above.
33. Other businesses in the area have been highlighted and it is argued that this demonstrates that the location can successfully accommodate commercial activities. However, while I saw some of the sites from the adjoining roads at my visit I do not know the detailed background planning history and circumstances that led to their establishment and operation. I therefore attach limited weight to these other sites as a justification for the present appeal proposal which I have considered on its merits.
34. Drawing all these matters together, I conclude that the development plan would not support the proposal in this location, because of the poor accessibility of the site by a range of transport modes. The scheme would therefore conflict with Policies S1 and EC3 of the Local Plan and the Framework which seek, in this respect, that the scale of employment is appropriate to the accessibility of the site by public transport, cycling and walking.

⁴ In accordance with the Planning Practice Guidance - Paragraph: 015 Reference ID: 21a-015-20140306

Other Matters

35. The evidence shows that the appellant company is committed to providing local employment, training staff and taking on apprentices. The proposal would allow the transfer of the existing business enabling the company to expand and to take on more staff. This would provide potential employment to this rural area. These beneficial economic outcomes would be supported by the Framework. The building would incorporate features such as heat pumps and grey water use to make it as sustainable as possible and biodiversity gain would be delivered across parts of the wider site. The site would provide purpose designed new facilities in an attractive rural area and this would ensure that staff at the site had a pleasant working environment with high welfare standards.
36. I have had regard to the highway submissions and that the scheme was not refused on highway safety grounds.
37. There could be economic benefits from staff using local facilities such as shops and pubs related to the presence of the business in the area. The case is made that employment generation and support for businesses is more important than ever with the current circumstances of the Covid pandemic and this is another key reason why the scheme should be supported. These are all important planning considerations, and having particular regard to the level of employment projected which would result from relocation, I attach the cumulative benefits moderate weight.
38. The proposal has attracted substantial local opposition from local residents and from both Tedburn St Mary and Whitestone Parish Councils. I have noted the appellant's geographical analysis of the location of those who have written letters of objection. There are also representations in support of the proposal, which include comments reinforcing the positive and supportive approach of the company and that the impacts would not be as harmful as envisaged by those who oppose the development. I have had regard to all these submissions in my considerations and analysis of the main issues which have been set out above.

Planning Balance and Conclusion

39. The benefits of the scheme are not without merit and in the circumstances of this case I attribute them moderate weight. However, the proposal would harm the character and appearance of the area and be located where there would be a dependence on the private vehicle to access the site such that this would conflict with the locational approach to development as set out in the development plan and the Framework. The combined harm that I have identified is a matter I attribute substantial weight and could not be addressed or mitigated satisfactorily by planning conditions. Accordingly, the benefits of the scheme would not be outweighed by the harm.
40. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn INSPECTOR