



Appeal Decision

Site Visit made on 20 July 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Appeal Ref: APP/U1105/W/21/3270506

The Rowans, Sidmouth Road, Clyst St. Mary, Exeter EX5 1DR

- 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 R G Down against the decision of East Devon District Council.
 - The application Ref 20/1449/FUL, dated 2 July 2020, was refused by notice dated 22 December 2020.
 - The development proposed is change of use of existing agricultural barn & workshop at Crealy Farms to 2 no. 2 bedroom ground floor residential flats.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of existing agricultural barn & workshop at Crealy Farms to 2 no. 2 bedroom ground floor residential flats at The Rowans, Sidmouth Road, Clyst St. Mary, Exeter EX5 1DR in accordance with the terms of the application, Ref 20/1449/FUL, dated 2 July 2020, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Plan G/A – Existing Floor Plan; Plan G/A – Proposed Floor Plan; Existing & Proposed Elevations (West and South); Existing & Proposed Elevations (East and North).
 - 3) The materials to be used in the construction of the external surfaces of the flats hereby permitted shall match those used in the existing building.

Applications for costs

2. An application for costs was made by Mr R G Down against East Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have used the description of the proposal from the appeal form, as it more accurately and concisely describes the development than that given on the application form.
4. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how

they should be applied. Both parties have been given the opportunity to make comments relating to the updated Framework.

5. The site is within the influence of the Exe Estuary Special Protection Area and Ramsar site, and the East Devon Pebblebed Heaths Special Area of Conservation/Special Protection Area (the SPAs), which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). Although not an issue raised by the Council in its reasons for refusal, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. It is therefore necessary to consider this matter as a main issue.

Main Issues

6. The main issues are:
 - a) Whether the site is suitable for two dwellings, having regard to the settlement policies of the development plan and the accessibility of services and facilities; and,
 - b) The effect of the development on the integrity of the Exe Estuary SPA and Ramsar site and the East Devon Pebblebed Heaths Special Area of Conservation/SPA.

Reasons

Development plan policies and accessibility of services

7. The appeal relates to the ground floor of a red brick two-storey building on the edge of Crealy Adventure Park. It is part of a courtyard of buildings, which already includes residential uses. The first floor of the subject building has previously been converted to residential use and, as a result, the entire building has a rather domestic appearance. The appeal proposes the conversion of the ground floor to two flats, which could be achieved with minimal external alterations. Consequently, the proposal would have little impact on the character and appearance of the building and its setting.
8. The site is surrounded by buildings, including the other dwellings within the courtyard, and the large structures associated with the Adventure Park to the south. There is also an extensive business park approximately 200 metres to the north, on the opposite side of the busy A3052 road. The site is, therefore, not isolated from other development. It is, however, outside the Built-up Area Boundaries and site-specific allocations shown on the Proposals Map of the East Devon Local Plan 2013-2031 (Adopted 2016) (the Local Plan). It is, therefore within the defined countryside for the purposes of the Local Plan, where Strategy 7 only permits proposals that accord with a specific policy that explicitly permits such development.
9. Policy D8 of the Local Plan specifically permits the conversion of buildings in the countryside to residential use, subject to a number of criteria. It is not disputed that the proposal complies with these criteria, with the exception of c), which requires that the building is located close to a range of accessible services and facilities to meet the everyday needs of residents. This requirement is reinforced by Policy TC2 of the Local Plan, which is an overarching policy that aims to direct new development to locations that are accessible by pedestrians,

cyclists, and public transport, and are well related to compatible land uses to minimise the need to travel by car.

10. The site lies approximately 2.5 kilometres from Clyst St Mary, which is the nearest settlement with a range of services. The edge of the city of Exeter, with its extensive facilities, lies approximately 4 kilometres away. The A3052, which links the site to these two settlements carries high volumes of traffic, including a significant proportion of heavy vehicles from the nearby industrial estates driving to and from the M5 motorway. It has a 50-mph speed limit, is largely unlit, only has intermittent footways and there is no dedicated cycle lane. It does not, therefore, provide a safe route for pedestrians or cyclists. Consequently, the services in Clyst St Mary and Exeter would not be easily accessible to the occupants of the flats on foot or by bicycle.
11. There is, however, a bus stop within 200 metres walking distance of the site. Pedestrian access to this bus stop would be achieved via a safe, segregated footpath. Occupants of the flats would, therefore, have easy access to a bus service for the short journey to Clyst St Mary, and onward to Exeter. Paragraph 26.4 of the Local Plan explains that Policy TC2 promotes development in sustainable locations, where people can make realistic and viable alternative choices to the use of the private car. The proximity of the bus stop, and the easy pedestrian access to it, would give occupants a genuine and practical choice of using a more sustainable means of transport than the car to obtain day-to-day services.
12. As well as having easy access to a bus stop, occupants of the flats would also be within easy walking distance of a range of employment opportunities. The many businesses located on the extensive Hill Barton Business Park, are accessible by foot, and within 350 metres walking distance. Furthermore, the site is not isolated, and is located close to other residential properties, the Adventure Park, and the business park. As a result, it is likely that car-borne services, such as postal deliveries, will be linked to other trips in the locality, rather than being individually generated by the flats, thereby reducing the overall level of car-use generated by the development.
13. It remains likely that occupants of the flats will find it necessary to make some trips from the site by car. Paragraph 26.5 of the Local Plan recognises that vehicular access will be an essential requirement for most developments, especially in rural areas. However, in this instance, there would be convenient access to the services in Clyst St Mary and Exeter by bus, and a wide range of employment opportunities accessible on foot. Residents of the development would not, therefore, be solely reliant on the private car for most day-to-day services.
14. My attention has been drawn to an appeal decision¹ relating to a different part of the Adventure Park, in which the Inspector concluded that *"this part of the countryside is physically separate and remote from any settlement and for planning policy purposes is isolated"*. However, that conclusion was made with regard to the use of land for the stationing of 12 mobile homes for residential use, rather than the conversion of an existing building. Different considerations therefore applied, and the development did not have the support of Policy D8. Consequently, it was not comparable to the appeal before me.

¹ Planning Inspectorate ref: APP/U1105/C/20/3249830

15. In conclusion, occupants of the development would have access by bus to a range of services to meet their everyday needs, and employment opportunities would lie within easy walking distance. The proposal would, therefore, accord with Strategy 7 and Policies TC2 and D8 of the Local Plan, which seek to limit development in the countryside, and to ensure that new developments, including converted rural buildings, are accessible, to minimise the need to travel by car.

Special Protection Areas

16. The Court of Justice of the European Union has ruled² that, when considering the effect that a development proposal may have on a European Designated Site, the decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.
17. The Habitats Regulations require that permission for development may only be granted after it has been ascertained that it will not affect the integrity of the European sites. The Exe Estuary qualifies as a European Site as it supports overwintering populations of Avocet and Slavonian Grebe, regularly occurring migratory species, and as a site supporting an internationally important assemblage of waterfowl. The Pebblebed Heaths qualifies because of its north Atlantic wet heaths, European dry heaths, and the populations of southern damselfly. It also regularly supports 2.4% of the UK population of breeding nightjar and 8% of the UK population of breeding Dartford warbler.
18. Both SPAs are also attractive sites for public recreation. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on the features of interest of the SPAs, due to the resultant increase in recreational use.
19. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. In partnership with the two adjoining authorities, the Council has adopted a report³ that provides a strategy to mitigate for the potential in-combination impacts of new housing development on three European sites within, and in the vicinity of, East Devon District, Exeter City and Teignbridge District. To achieve mitigation, the Councils pool money, using an adopted formula, to be spent on an identified range of infrastructure and non-infrastructure projects which will mitigate the cumulative harm resulting from development in the area of influence. The funding for the mitigation is secured partly by prioritising expenditure of Community Infrastructure Levy, and partly by way of developer contributions. In this case, the developer contribution has already been secured through a S111 Agreement⁴.
20. Although a S111 Agreement does not bind the land or obligate the Council, the Council has supplied a recent committee report⁵ which demonstrates that such agreements are successfully attributing money to necessary mitigation projects, and that the identified projects are being delivered. There is no evidence before me to cast doubt on these findings and, furthermore, Natural

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

³ South-East Devon European Sites Mitigation Strategy (2014)

⁴ Pursuant to the Local Government Act 1972

⁵ Report to Strategic Planning Committee dated 20 August 2019

England is content that the Section 111 Agreement secures the deliverability of mitigation measures to prevent the harmful effects of recreational disturbance from occurring as a result of the development.

21. Consequently, I am satisfied, based on the specific evidence before me, that the S111 Agreement is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's adopted strategy. I therefore find within my AA that, with the provided mitigation, the proposal would not result in a harmful effect on the integrity of the SPAs.

Conditions

22. The Council has not suggested any conditions if I am minded to allow the appeal. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty for all parties. The appellant has stated that a condition relating to materials would be acceptable. To protect the character and appearance of the building, I have imposed a condition requiring materials to match the existing.

Conclusion

23. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR