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# Appeal Decision

Site Visit made on 25 October 2021

**by David Wyborn BSc(Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 November 2021**

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**Appeal Ref: APP/U1105/W/21/3279651**

**The Old School, Road From Honiton Road to Pound Corner, Clyst Honiton EX5 2LZ**

- 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 Chris Rudge against the decision of East Devon District Council.
  - The application Ref 21/1125/OUT, dated 20 April 2021, was refused by notice dated 8 July 2021.
  - The development proposed is the construction of one dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for the construction of one dwelling at The Old School, Road From Honiton Road to Pound Corner, Clyst Honiton EX5 2LZ in accordance with the terms of the application, Ref 21/1125/OUT, dated 20 April 2021, and subject to the conditions set out in the attached schedule.

## Preliminary Matters

2. The application has been made in outline with all matters reserved for future consideration. An illustrative plan has been submitted with a design and layout of the potential dwelling and I have had regard to this as to what the appellant has in mind for the proposal.
3. A signed and dated undertaking under Section 111 of the Local Government Act 1972 has been submitted to seek to mitigate the recreational effects from residents of the development on the Exe Estuary and East Devon Pebblebed Heaths Special Protection Areas (SPAs). I am satisfied that this agreement and related payment (together with charges which would be collected under the Community Infrastructure Levy) would be in accordance with the South East Devon European Site Mitigation Strategy and the scheme, either alone or in combination with other projects, would not adversely affect the integrity of these habitats sites.

## Main Issue

4. The main issue is whether or not the proposed development would be in an appropriate location, having regard to the development plan and national policies for housing, and accessibility to services and facilities.

## Reasons

5. Strategy 27 of the East Devon Local Plan 2013-2031 (the Local Plan) sets out the strategy for the development at small towns and larger villages. The policy lists named settlements that are identified to offer a range of accessible services and facilities to meet many of the everyday needs of local residents and have reasonable public transport. These listed settlements have a Built-up Area Boundary within which development may be acceptable. Outside these Built-up Area Boundaries the land is identified as countryside and development is subject to consideration under Strategy 7 of the Local Plan concerning development in the countryside.
6. The appeal site lies within Clyst Honiton. However, Clyst Honiton is not a named settlement identified in Strategy 27 of the Local Plan. The site for the proposed dwelling therefore lies in the countryside for planning purposes. The provision of a new dwelling in such a location would not comply with the criteria set out in Strategy 7 of the Local Plan. Consequently, the principle of a dwelling on this site is not policy compliant. As Strategies 7 and 27 of the Local Plan are elements of the overall strategy for the delivery of housing across the plan area, I consider that the scheme would not comply with the development plan when taken as a whole.
7. It is not disputed that the Council is able to demonstrate a National Planning Policy Framework (the Framework) compliant supply of deliverable housing land. However, the appellant argues that the presumption in favour of sustainable development, as detailed in paragraph 11 of the Framework, is engaged because the most important policies for determining the application are out-of-date. It is therefore necessary to consider whether this is the case.
8. The policy advice in paragraph 219 of the Framework explains that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework but that due weight should be given to them according to their degree of consistency with the Framework.
9. In terms of rural housing, paragraph 79 of the Framework explains that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The Framework policy advice is that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Furthermore, it is explained that where there are groups of smaller settlements, development in one village may support services in a village nearby.
10. The Planning Practice Guidance (the Guidance) was updated in July 2019 regarding rural housing and includes the advice that a wide range of settlements can play a role in delivering sustainable development in rural areas, so blanket policies restricting housing development in some types of settlement will need to be supported by robust evidence of their appropriateness.
11. It appears to me that the general approach of the development plan to direct development to the larger settlements and then smaller towns and larger villages is Framework compliant, because it directs new residents to the most sustainable locations. However the policy approach does not appear to enable,

other than through a specific Local Plan or Neighbourhood Plan policy, for development in smaller villages or other locations where development could help sustain rural communities in accordance with the Framework policy approach. The combined effect of Strategies 7 and 27 appears to be a broadly blanket approach that does not generally allow development outside the named settlements and has little regard to the circumstances of those locations. Limited robust and detailed evidence and commentary has been provided by the Council to seek to demonstrate the appropriateness of this approach and why it should be considered to accord with the Framework policy for development in rural areas, in particular for a location such as Clyst Honiton.

12. As a consequence, I consider that there is some material degree of inconsistency between the Framework and Strategies 7 and 27 of the Local Plan in the respects that I have highlighted.
13. Looking at the circumstances of the location for this proposal, the Council comment in the planning report that the site lies within a settlement<sup>1</sup> and I have noted the findings of the Inspector when he considered the same proposal in 2018<sup>2</sup>. I agree that the site is located within Clyst Honiton and that this settlement is only a reasonably short distance from the urban edge of Exeter and the fairly nearby and growing settlement of Cranbrook. These settlements provide a wide range of services and facilities. There appear to be safe walking and cycling routes to these settlements and I noted the bus stops on the main road which the previous Inspector considered provided a frequent bus service. I have no material evidence to show that the service has substantially altered in the meantime. There are various employment sites in the locality, including the Exeter Airport Business Park and the Exeter Science Park, some of which appear to be expanding. The settlement itself has two public houses, a church and play area.
14. I agree with the previous Inspector that these local circumstances means that there are a variety of opportunities for future occupants of the proposed dwelling to be able to meet their day to day needs nearby and without reliance on the private vehicle. It seems to me from my site visit that further dwellings, facilities and services, together with the new business premises, have been and are being developed in the general area. This apparent situation on the ground also has an influence on the relevance of the approach set out in Strategies 7 and 27 of the Local Plan, in comparison with the approach to that set out in the Framework, when considering the principle of a dwelling on the appeal site at Clyst Honiton.
15. Drawing these matters together, I conclude because of the degree of identified inconsistency of Strategies 7 and 27 of the Local Plan with the Framework, and the circumstances on the ground for Clyst Honiton, these identified policies should be considered out-of-date in the case of the appeal scheme.
16. Strategies 7 and 27 of the Local Plan are the most important for determining the appeal proposal and, as I have concluded that they should be considered out-of-date in the circumstances of this case, the presumption in favour of sustainable development, as set out in paragraph 11d of the Framework is engaged. This indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the

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<sup>1</sup> Albeit one that in policy terms fall to be in the countryside.

<sup>2</sup> APP/U1105/W/18/3210898

benefits, when assessed against the policies in the Framework taken as a whole.

17. With appropriate details at the reserved matters stage, the dwelling would not harm the setting or significance of the listed Church or the character and appearance of the area. No harm should result to neighbouring amenity and issues of sound disturbance, in respect of aircraft noise associated with the nearby Exeter Airport, could be addressed by suitably worded conditions in any approval<sup>3</sup>. I am satisfied, like the previous Inspector, that the proposal should not affect the employment activities of The Old School site. I have concluded that the recreational impact of the additional residents on the SPAs would be adequately mitigated. These matters are all important considerations, although not benefits of the scheme and, therefore, neutral in the overall balance.
18. The proposed dwelling would not be isolated development in the countryside but located amongst other buildings within the settlement. I have already commented on the fairly good accessibility of the site to local employment opportunities, and services and facilities without the need to use the private vehicle. The accessibility of Clyst Honiton to other settlements would allow the new occupants the opportunity to support services in other settlements nearby. Furthermore, there are also some facilities in the settlement which would be supported by the proposed occupants of the dwelling. There would be some economic benefits which would accrue from the construction of the dwelling, although these would be limited to the construction period. These are all benefits of the scheme and which would accord with the Framework approach to the location of rural dwellings.
19. The Council can demonstrate a 5 year housing land supply but these figures are not a maximum and the construction of the dwelling would deliver a small, but worthwhile, boost to housing land supply, on a windfall site in accordance with Framework policy.
20. Taking all these identified benefits of the scheme into account, nevertheless, as only a single dwelling would be provided, cumulatively they afford limited weight in favour of the proposed dwelling.
21. I have taken into account the objections to the proposal from the Parish Council. In particular, the emerging Clyst Honiton Neighbourhood Plan (the emerging NP) has been referenced and the evidence indicates that the draft policies would not support the dwelling in this location. However, the emerging NP and its policies are at a stage where they can only be attributed limited weight. The approval of a single dwelling would not be premature in relation to this plan making process.
22. I have taken into account all the comments and conclusions of the previous Inspector. That Inspector commented that he had nothing before him to suggest that the overall spatial strategy of the Local Plan was out-of-date at that time. I consider that this means that he did not have the evidence presented on the policy situation to enable him to determine whether the presumption in favour of sustainable development was engaged. Even if I am wrong on that matter, I still need to consider the fairly substantial evidence from the appellant seeking to make the case in that regard. Furthermore, the Guidance has been revised and now advises that a wide range of settlements

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<sup>3</sup> This has addressed the previous objections and the reason for refusal on this ground.

can play a role in delivering sustainable development in rural areas and there is advice on blanket policies restricting housing development in some types of settlement. Consequently, I have different evidence before me that requires a revised assessment of the planning merits of the proposal.

23. Bringing all these matters together, the scheme would conflict with Strategies 7 and 27 of the Local Plan. However, I have found that in the circumstances of the appeal proposal that these policies should be considered out-of-date. With the location of the scheme within the settlement of Clyst Honiton, with all the attributes of such a location, I attribute the conflict with these policies, and with the development plan as a whole, limited weight.
24. The scheme would be Framework compliant when considered as a whole and, with appropriate details at the reserved matters stage, there would be no physical harm to the area from the delivery of the scheme. For the reasons I have explained the combined benefits merit limited weight in favour of the proposal.
25. When undertaking the planning balance required by paragraph 11d of the Framework, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework when taken as a whole. Accordingly, this balance falls in favour of the scheme and the proposal would constitute sustainable development. This weighs heavily in support of the proposal.
26. In the light of the above analysis, I conclude that the proposed dwelling would be in an appropriate location having regard to the policies for housing and accessibility to services and facilities in the Framework. Accordingly, I find that other material considerations are of such weight in favour of the scheme that they indicate that a decision should be made other than in accordance with the development plan. Consequently, I conclude that the appeal should succeed.

### **Conditions**

27. I have had regard to the conditions suggested by the Council and the advice in the Framework and Guidance. I have amended the wording where necessary in the interests of clarity or to meet the tests in the Guidance. The statutory outline time limits are required and a condition specifying the approved plans is necessary in the interests of certainty.
28. It is not necessary to attach the suggested conditions on landscape planting and external materials as these are reserved matters. Such requirements specified in the draft conditions can be addressed at the reserved matters stage, if required.
29. Conditions in respect of sound proofing, use of the loft space and acoustic fencing are necessary to ensure suitable living conditions for future occupants in respect of aircraft noise, following the advice in the Clarke Saunders Noise Impact Assessment Report (April 2021) and the recommendations of the Environmental Health Officer. I am satisfied that the visual impact of the fencing around the boundary of the amenity space can be mitigated by suitable positioning, design and landscaping with details agreed at the reserved matters stage.

**Conclusion**

30. For the reasons set out above, I conclude that the appeal should be allowed.

*David Wyborn*

INSPECTOR

### **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan 1:1250.
- 5) Prior to the first use of the building for residential use, the following soundproofing measures shall have been installed:  
Walls: achieve a minimum 51 dB Rw  
Roof: achieve a minimum 49 dB Rw  
Windows:  
Acoustic Glazing: achieve a minimum 39 dB Rw  
Acoustic Ventilators: achieve a minimum Dn,e,w 42 dB  
Doors and any other openings: achieve a minimum 39 dB Rw  
Once the soundproofing measures have been completed, the weighted sound reduction of the building shall be fully tested and validated by a competent person in order to demonstrate that it is providing the specified level of sound reduction. Details of the validated report must be submitted to the Local Planning Authority and approved in writing prior to the development being used for residential use.
- 6) Due to the noise level predictions, the loft space/attic shall not be used as a habitable room until a further scheme of soundproofing has been submitted to and approved in writing by the Local Planning Authority. The works shall be completed in accordance with the approved details prior to the first use of the loft/attic space as habitable accommodation.
- 7) Prior to first occupation of the dwelling hereby approved, a 1.8m high acoustic fence shall be installed around the boundary of the external residential amenity space. The fence shall be of solid construction with no air gaps and have a minimum surface mass of 12 kg/m<sup>2</sup> and shall remain as approved in place in perpetuity.

End of Schedule