



Appeal Decision

Site visit made on 20 January 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2022

Appeal Ref: APP/U1105/W/21/3282445

Land South of Underhill Close, Lymptone, Devon

- 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 and Mrs C Fayers against the decision of East Devon District Council.
 - The application Ref 20/0933/OUT, dated 22 April 2020, was refused by notice dated 19 March 2021.
 - The development proposed is construction of predominately single storey dwelling with annex accommodation. Outline application with all matters except access reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for construction of predominately single storey dwelling with annex accommodation, outline application with all matters except access reserved, at Land South of Underhill Close, Lymptone, Devon in accordance with the terms of the application Ref 20/0933/OUT, dated 22 April 2020, subject to the conditions in the attached schedule.

Procedural Matters

2. In the interest of clarity, I have taken the site address from the appeal form.
3. The planning application was submitted in outline with all matters aside from access reserved. I determined the appeal on that basis, treating the submitted drawings as illustrative.
4. Much of the appeal site is laid out as a car park, with associated lighting columns. However, I am led to believe that these site features should be temporary and are now unauthorised. Whilst it is not for me to reach a view as to their lawfulness or otherwise within this section 78 appeal, in the interests of certainty they have had no further influence upon my assessment.
5. Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether or not the proposal would be likely to have significant effects on the integrity of the Exe Estuary Special Protection Area (the SPA) and the Pebblebed Heaths Special Protection Area/Special Area of Conservation (the SAC) (together the European Sites). This is because they are European Sites afforded protection under the Conservation of Habitats Regulations 2017 as amended (the Habitats Regulations).
6. During the appeal an agreement under S111¹ was submitted by the appellant which is intended to secure mitigation towards the effect of the proposal on the European Sites. I must therefore attend to this matter as a main issue.

¹ Of the Local Government Act 1972

Main Issues

7. The main issues are therefore:

- the suitability of the site for the proposal, having regard to the development plan's approach to the location of housing; and,
- the effect of the proposal on the integrity of the European Sites.

Reasons

Suitability of the site

8. The site is outside of but adjoins the Lympstone 'Built-Up Area Boundary'. This places it within the designated countryside under the terms of the East Devon Local Plan 2013-2031 (adopted 2016) (EDLP). Strategy 7 of the EDLP provides that, in such locations, development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located.
9. Policy 2 of the Lympstone Neighbourhood Plan (LNP) (made 2015) states that isolated homes in the countryside will generally be resisted. Amongst other things, its supporting text refers to the need to ensure that sites are as close to services and facilities as possible. In this case, the site is bound by Lympstone to the north and east, and also to the west beyond a railway line. The proposal would take its access directly from the village, off Underhill Close, and would be a short and untaxing walk to Lympstone's amenities. Given such, the site is not isolated in the countryside under the terms of the LNP.
10. The site is part of a locally designated 'Green Wedge' which separates Lympstone from Exmouth, which is nearby to the south. Strategy 8 of the EDLP prohibits development within Green Wedges that would add to existing sporadic or isolated development or damage the individual identity of a settlement or lead to/encourage settlement coalescence. Policy 3 of the LNP states that development will not normally be permitted in the Green Wedges unless it can be demonstrated that no harm to the character or purpose of these areas will occur and, if so demonstrated, where it would comply with one of four given circumstances. I will address the issues of character and appearance first.
11. The development would read as infill and would relate very well to surrounding housing, falling inside a notional building line across this southern extent of the village. It is bound by a substantive hedgebank along its south perimeter. If this feature is retained, and if the dwelling were to maintain a low-profile design as suggested, the proposal would have a negligible presence within the Green Wedge in views from the public footpaths and the highway network to the south. On this basis, the scheme would consolidate the pattern of development at this village edge without harm to the character and appearance of the Green Wedge and without any semblance of encroachment towards Exmouth.
12. Now I turn to the four given circumstances within Policy 2, and my particular interest relates to the third circumstance, which informs us that a scheme that would not harm the Green Wedge may be justified on 'sustainability grounds'. What is meant by this term is not defined by the LNP. Whilst the Council considers the scheme is not justified on sustainability grounds, it has not set out its understanding of the term nor substantiated its position in this regard.

The appellant considers it to refer to the overarching social, environmental and economic objectives within Paragraph 8 of the National Planning Policy (the Framework). This is a logical approach, and in the absence of any argument to the contrary, it is the one I have adopted for the benefit of my assessment.

13. I have found that the scheme would protect the character and appearance of the area and that occupants of the dwelling would enjoy good access to local services and facilities. Economically, there would be a short-term benefit during construction and a small benefit to local facilities through their likely increased use. In social terms, the scheme would provide a predominately single storey home, with an annexe which could be designed to accommodate the elderly demographic. This reflects the local need, expressed by the LNP, for single storey homes adapted for the elderly. For these reasons, the scheme performs well against the sustainability objectives set out within the Framework. The aforementioned circumstance within Policy 2 therefore applies.
14. Consequently, I conclude on this issue that the site would be suitable for the proposal, having regard to the development plan's approach to the location of housing. In this regard, it would accord with Strategy 7 and Strategy 8 of the EDLP, Policies 2 and 3 of the LNP and the Framework.

European Sites

15. The site falls within the respective zones of influence of the European Sites. The Habitats Regulations require that permission may only be granted having ascertained that the development will not affect the integrity of European Sites.
16. The SPA qualifies for its overwintering Avocet and Slavonian Grebe, regularly occurring migratory species and as it supports an internationally important assemblage of birds. The SAC qualifies owing to its north Atlantic wet heaths with cross-leaved heath, European dry heaths and the populations of southern damselfly. It regularly supports 2.4% of the UK population of breeding nightjar and 8% of the UK population of breeding Dartford warbler.
17. These European Sites are also important recreational resources, and it is likely that occupants of the dwelling would visit them. On this basis, there is no dispute between the main parties, nor Natural England (NE), that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would have significant effects on the features of interest of both European Sites due to increased recreational use.
18. It is agreed by the main parties and NE that to mitigate against such effects, financial contributions should be secured in relation to both sites, pursuant to the South-East Devon European Sites Mitigation Strategy (SEDESMS). It is also agreed that the appropriate sums would be secured by the submitted S111. I can see that the SEDESMS contains projects related specifically to Lymptone, and it is evident that projects within the strategy are successfully mitigating recreational effects through the S111 payment mechanism².
19. As such, I am satisfied, on the evidence before me, that the S111 has provided a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's strategy for development which could affect the European Sites. This leads me to conclude that the proposal would not have an adverse effect on the integrity of the European Sites and would

² The report considered by the South and East Devon Habitat Regulations Executive Committee on 29 April 2019

accord with Strategies 47 and 50 of the EDLP, the Habitats Regulations and the Framework insofar as they seek to secure the protection of such sites and mitigate any adverse effects on their integrity.

Other Matters

20. Concerns have been expressed by Lymestone Parish Council about this scheme setting a precedent for development. However, each case must be assessed on its own individual merits. Concerns have also been registered regarding the design of the scheme. The somewhat individual location of the site and the likely, fairly set back position of the dwelling, suggests that a contemporary or bespoke design approach would be appropriate. For the reasons I have already expressed, the scheme would not cause harm to the Coastal Preservation Area.
21. I have no reason to doubt that suitable surface and foul water drainage can be provided within the site. Given the size of the site, I am also satisfied that a dwelling can be designed which would adequately respect the living conditions of neighbouring occupants within Underhill Close. For the same reason, I find it likely that construction activity could be well managed within the site. Traffic movements associated with the dwelling itself would be very modest.

Conditions

22. The Council has suggested several conditions which I have amended for the sake of clarity and precision. The landscaping condition, given the location of the site within the Green Wedge, I find necessary. However, I have amended it to remove reference to issues unrelated to landscaping, and those to be addressed by a condition relating to adherence to the recommendations of the appellant's ecological appraisal. It is necessary at this stage for a condition to secure the ancillary status of the annexe. Given also the issue of building height in relation to the Green Wedge, a condition is needed to ensure that finished floor levels are presented within the detailed drawings of the scheme.

Conclusion

23. For the reasons outlined above, and taking all other matters raised into account, I shall allow the appeal.

Matthew Jones

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (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) As part of any reserved matters application for landscaping, the following information shall be submitted:
 - a) A site layout plan, identifying areas of paving, planting, boundary treatments, structures and features.
 - b) A detailed planting plan including details for enhancement of boundary hedgerows and the creation of wildflower areas and aquatic planting.
 - c) A full set of landscape details covering walls, retaining structures, gates, fencing, paving, edgings, site furniture and other structures.
 - d) Details of any green roofs including construction make up, drainage layer, planting substrate and proposed planting mix and form.
 - e) Measures for the protection of perimeter trees and hedgerows during the construction phase in accordance with BS5837: 2012. Approved protective measures shall be implemented prior to commencement of construction and maintained for the duration of the works.
 - f) Management and maintenance of existing hedgerows. Management and maintenance of wildflower areas. Management and enhancement of other measures to improve biodiversity value.
- 5) The annex accommodation shall be used only in conjunction with, and ancillary to, the dwelling hereby approved.
- 6) As part of any reserved matters application details of final finished floor levels and finished ground levels in relation to a fixed datum shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 7) The development hereby approved shall be carried out in accordance with the mitigation and enhancement measures contained within the Preliminary Ecological Appraisal prepared by Colin N Wills dated 11th July 2018 and the letter dated 19th March 2020.