
Appeal Decision

Site visit made on 4 January 2022

by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/U1105/W/21/3275285

2 Brooklyn, Stowford, Sidmouth, Devon, EX10 0NA

- 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 Peter Coletti against the decision of East Devon District Council.
 - The application Ref 20/2710/FUL, dated 3 December 2020, was refused by notice dated 14 April 2021.
 - The development proposed is for the change of use of land and construction of hardstanding to allow the siting of 2 shepherds huts for holiday accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land and construction of hardstanding to allow the siting of two shepherds huts for holiday accommodation, at 2 Brooklyn, Sidmouth, EX10 0NA, in accordance with the terms of the application Ref 20/2710/FUL, dated 3 December 2020, 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 03/12/20
 - Proposed Site Plan 1311.02B 09/03/21
 - Proposed Shepherd Huts 1311.03A 03/12/20
 - 3) The two units of accommodation hereby approved:
 - (i) shall be occupied for holiday purposes only;
 - (ii) shall not be occupied as a person's sole, or main place of residence;
 - (iii) the owners/operators shall maintain an up-to-date register of the names of any occupiers and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.
 - 4) Prior to occupation of the hereby approved shepherd huts, the visibility splay as indicated on the Proposed Site Plan (DRWG 1311 – 02 REV B) shall be implemented as per details that have first been approved in writing by the Local Planning Authority. The visibility splay shall be maintained thereafter free of any impediment to their designated use.

Main Issues

2. The main issues are (1) whether the principle of the proposed tourism huts on this site is acceptable given planning policy and the location of the site; and also (2) the effect of the development on the character and appearance of the area and the scenic beauty of the East Devon Area of Outstanding Natural Beauty (AONB).

Reasons

Countryside Location of Site

3. The site is outside of the any designated settlement boundary, including the 'Built-up Area Boundary' (BUAB) of Sidmouth, even if it is only a short distance from this. As such, with regard to planning policy, the proposed site for the two tourism accommodation huts would be set within the countryside.
4. Within the East Devon Local Plan 2013 – 2031, Strategic Policy 7 states that "Development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy." Further to this, policies E16 and E19 are of particular relevance as they relate to tourism development. Policy E16 relates to 'Proposals for Holiday or Overnight Accommodation and Associated Facilities', as is being proposed with this appeal. However, this policy only allows for conversions of existing buildings in the countryside, whereas the proposed huts would be new structures on site. As such, the proposal would not accord with this policy.
5. Policy E19 allows for holiday accommodation parks, but only outside of designated landscape areas. The site is within the AONB and so the proposal would not accord with this policy.
6. Whilst not in accordance with policies E16 and E19, Strategic Policy 33 states that the Council will support and facilitate high quality tourism in East Devon. The proposal would provide two new shepherd huts as tourism accommodation near to Sidmouth, which would aid tourism growth and have a beneficial effect on the local economy.
7. As stated above, the site is outside of the Sidmouth BAUB boundary, where the Sid Valley Neighbourhood Plan (NP) states that there should be a general presumption against new residential development. However, this is not a typical form of residential development, being that it is for tourism purposes with economic benefits. In terms of its location, being for tourists it is likely that future occupiers would use private cars to travel about the area, though this is countered by the economic benefits. Furthermore, as the site is adjacent to Sidmouth this is not a particularly unsustainable or inaccessible area with the site well related to services and facilities within Sidmouth and those on the periphery.
8. Overall, the proposed development is contrary to Strategic Policy 7 of the East Devon Local Plan as it would be development in the countryside which does not accord with any other policies within the Local Plan or Neighbourhood Plan, such as those set out above. However, the harm is limited as the site is immediately on the edge of Sidmouth in a reasonably accessible location, with benefits from the tourism provision. This shall be considered further in the planning balance.

Visual Impacts

9. The proposal would be for two small 'shepherd' huts on what is agricultural land and within the AONB. Whilst the proposal would introduce built development into the AONB, this is a very modest scale development with the huts having a distinctly rural type of appearance. The modest scale and rural appearance would mean they would not result in a harmful urbanising effect or be likely to cause light pollution. They are also in a location where they are screened from many short and medium distanced views.
10. The huts would not be in an isolated location, being set within a cluster of existing buildings and adjacent to the substantial garden centre. This would further reduce the visual prominence of the proposed tourist huts.
11. As such, whilst set within the countryside in planning policy terms, and within the designated AONB boundaries, there would be no discernible harm to the character and appearance of this area or the scenic beauty of the AONB. The proposal would conserve the natural beauty of the wider area. The proposal is therefore in accordance with policies 'Strategy 46' and D1 of the Local Plan. These policies require development to respect the key characteristics and special qualities of the area and to conserve and enhance the natural and historic landscape character of East Devon, in particular in Areas of Outstanding Natural Beauty, amongst other things.

Other Matters

12. The site is within the influence of the Pebblebed Heaths Special Area of Conservation (SAC) and Special Protection Area (SPA). The Pebblebed Heaths are a protected area because of its north Atlantic wet heaths with cross-leaved heath, European dry heaths and the populations of southern damselfly, for example.
13. These sites are an important tourism, recreational and economic resource. They are visited by the public and it is likely that occupants of the proposed development would visit them also. In this regard, the evidence before me is clear that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations as a result of increased disturbance through recreational activity and tourism visits.
14. Mitigation against these likely effects is therefore required. As set out by the Council, mitigation is secured via a combination of funding secured via the Community Infrastructure Levy (CIL) and contributions collected from residential developments within 10km of the designations. This development will be CIL liable, and the Council have confirmed that the financial contribution has been secured through a S111 agreement, in line with the South-East Devon European Site Mitigation Strategy. The mitigation, as set out in the Strategy, range from soft measures and proactive work with local residents, to enforcement.
15. This is in accordance with the Natural England comments on this appeal, which states that due to likely recreational pressures mitigation will be required towards the South-East Devon European Site Mitigation Strategy, which has been undertaken.
16. As noted above, the mitigation contribution was submitted with a signed agreement by the appellant under section 111 of the Local Government Act

1972. There is the question of how secure this form of agreement is as it is a personal undertaking and would not be enforceable against successors in title. However, as the contribution has already been made, I have no concern in this regard.

17. It is, though, my understanding that the S111 agreement does not legally bind the Council to spend the contribution towards the mitigation strategy. However, the Council has responded and explains that the agreement as set out expressly says that the payment would be towards the Pebblebed Heaths and Exe Estuary Special Protection Area Habitat Mitigation Contribution. This contribution has been paid to the Council for the defined purposes. On this basis the appellant would fully expect that the Council only used the contribution towards the mitigation projects. I am therefore satisfied that the Council would only use the contribution towards the South East Devon European Site Mitigation Strategy, as set out on the S111 form.
18. As such, I am satisfied, on the basis of the specific evidence before me, that there has been the delivery of proportionate and relevant mitigation pursuant to the Council's adopted, and NE endorsed, strategy. I therefore find within my Appropriate Assessment that, with the provided mitigation, the proposal would not result in a significant harmful effect to the international designated sites.

Planning Balance

19. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, I am required to determine appeals in accordance with the policies of the Development Plan, unless material considerations indicate otherwise.
20. Overall, considering all matters raised, including the conflict with some of the Development Plan policies, there are in this case material considerations that indicate that this development should be allowed, such as the aforementioned significant benefits to the tourism provision for the area and also to the local economy. In this regard, the National Planning Policy Framework states that decisions should enable sustainable rural tourism developments which respect the character of the countryside (Paragraph 84). It is my view that this proposed development of the two shepherd huts meets with this Framework description.
21. As such, on balance, the conflict with policy in this case and the levels of harm associated with this are outweighed by these positive and beneficial material considerations. These material considerations therefore indicate a decision not in full accordance with the aforementioned Development Plan policies.

Conditions

22. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. Some of the conditions I have included from the recommended list have been subject to some alterations to improve clarity and ensure consistency with the Framework and PPG.
23. I have attached the standard time limit condition and a plans condition as this provides certainty.

24. A condition requiring the huts as proposed to remain in tourism use has been included, as this is a countryside location and the proposals have been partially justified on the basis of the tourism benefits.
25. To address the possible issues with highway safety for the vehicular access linking with the A3052 the proposals include visibility splay improvements, which has been supported by the Council Highway Authority. A condition requiring this work to be undertaken has been included in the interests of highway safety.

Conclusion

26. For the reasons given I conclude that the appeal should succeed, subject to the listed conditions.

Mr S Rennie

INSPECTOR