

Appeal Decision

Site visit made on 23 February 2022

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2022

Appeal Ref: APP/U1105/W/21/3285255

Nursery Garage, Courtlands Lane, Lympstone, Exmouth, Devon EX8 5AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Nicholas McIlveen against the decision of East Devon District Council.
 - The undated application Ref 21/2069/PIP was refused by notice dated 4 October 2021.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal is for permission in principle (PiP). The Planning Practice Guidance advises that this is an alternative way of obtaining permission for housing-led development. The consent route has 2 stages: the first stage (or PiP stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
3. The scope of the considerations for PiP is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent Technical Details Consent application if PiP is granted. I have determined the appeal accordingly.

Main Issue

4. The main issue is whether or not the site is suitable for the proposal, having regard to its location, proposed land use and the amount of development.

Reasons

5. The site is predominately a vehicle servicing and sales business within a larger field set within the countryside between the settlements of Lympstone and Exmouth. This land use, and its extent within the field, was confirmed by a lawful development certificate on 26 April 2021 under ref 20/1911/CPE.
6. Strategy 7 of the East Devon Local Plan 2013-2031 (adopted 2016) (EDLP) provides that, in the countryside, development will only be permitted when 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.
7. 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 elucidates that this refers to the need to ensure that sites are as close to services and facilities as possible. It is similar in approach to Policy TC2 of the EDLP, which requires new development to be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.

8. In this case, the site is a not inconsiderable walk to the range of services within Lympstone. The connecting roads undulate, turn sharply and are largely bereft of dedicated pedestrian space and street lighting. The route to the nearest bus stops and the small shop at the adjacent petrol station is shorter but similar. On this basis, whilst walking or cycling may be an option for some in some instances, I do not consider that the locational tests set out within Policy 2 of the LNP and Policy TC2 of the EDLP would be met. The appellant has referred to two appeal decisions beyond Devon in relation to this issue¹. However, they attract limited weight as the issue of accessibility is highly fact sensitive and reliant on site specific planning judgment, based on local circumstances.
9. The site is part of a locally designated Green Wedge which separates Lympstone from Exmouth. Strategy 8 of the EDLP prohibits development within Green Wedges that would add to 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, in the first instance, development will not normally be permitted in Green Wedges unless it can be demonstrated that no harm to the character or purpose of these areas will occur.
10. The buildings within the site are modest and most of the land is used for low profile and transient motor vehicle parking within the field. This leads the site to have an innocuous, barely developed appearance, which allows it to contribute to the purposes of the Green Wedge. That said, the proposal seeks a range of between one to four dwellings. If, for argument's sake, dwellings were to be delivered in the approximate location and of the approximate scale of the existing garage structures. the scheme would likely have no additional impact upon the purposes of the Green Wedge designation. On this basis, I find that this matter could be addressed at the technical details consent stage.
11. I am referred to case law regarding the word 'isolated'². However, this case law relates to the National Planning Policy Framework (the Framework), not the LNP, which has a focus on isolation from services. In any event, the Court of Appeal makes clear that 'isolated' simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposal is or is not isolated is a matter of planning judgment. The site is clearly well away from Lympstone in an area explicitly identified to provide visual separation between the two distinct settlements of Lympstone and Exmouth. The properties around the site read as a sporadic smattering of houses within the Green Wedge. As such, they do not appear to form a village or even a smaller settlement. For these reasons, in my judgment the site is also isolated in the Framework's terms.
12. Drawing my findings together, I conclude that the site would not be suitable for the proposal, having regard to its location, proposed land use and the amount of development. Whilst the proposal would not conflict with Strategy 8 of the EDLP or Policy 3 of the LNP, there would be conflict with Policies TC2 and Strategy 7 of the EDLP and Policy 2 of the LNP and the Framework.

¹ Appeal Refs APP/C3105/W/20/3255419 and APP/C1435/W/20/3257830

² Braintree District Council v Secretary of State and others [2018] EWCA Civ 610

Other Matters

13. The site is within influence of the Exe Estuary Special Protection Area and the Pebblebed Heaths Special Protection Area/Special Area of Conservation. I am unable to rule out likely significant effects on the integrity of these sites in the first instance, owing to increased recreation within them. Had I been minded to allow the appeal, it would have been necessary to broach this matter within an Appropriate Assessment. As I am dismissing it for other reasons, I have not.

Planning Balance

14. In light of the above, the most important policies for deciding this appeal are Policies TC2 and Strategy 7 of the EDLP and Policy 2 of the LNP. The scheme's conflict with them, owing to the isolation of the site from services and facilities, draws it into conflict with the development plan when read as a whole.
15. The appellant contends that the most important policies for deciding the appeal are inconsistent with the Framework and therefore out-of-date because they present a blanket approach which may arbitrarily stifle housing growth in rural areas. On that basis, conflict with them should be given reduced weight, and the presumption in favour of sustainable development set out within Paragraph 11 d) ii) of the Framework should apply.
16. To support that position, my attention has been drawn to appeal decisions relating to sites in East Anglia and Mid Devon³, and, of perhaps greater relevance, an appeal decision in East Devon in November last year⁴. However, whilst I can understand why the Inspectors in those cases afforded less weight to the conflict with the development plan, the circumstances here are different.
17. Namely, Lymptstone has a made neighbourhood plan which identifies the type of housing needed in the area and allocates sites, based on housing needs surveys. In handing responsibility to a rural community to plan for housing, and where that community has embraced that responsibility through a neighbourhood plan, I find the development plan's approach to be well aligned with the Framework's commitment to needs based, rural housing delivery.
18. It follows that the most important policies here, as an overall 'basket', are consistent with the Framework. I therefore afford them full weight. It further flows from this that Paragraph 11 d) ii of the Framework is not engaged.
19. It is also suggested, with further reference to the Court of Appeal⁵, that the scheme would be more desirable than continuing the existing land use insofar as it would attract less vehicular movements. The site was busy with customers at my visit, and I have no reason to doubt that there is an inherent demand for it in the area. It seems to me logical that the intrinsically vehicle borne activity associated with the existing use would not disappear but would just gravitate to somewhere else if the scheme went ahead. As such, the idea of the business acting as a fallback position to justify the proposal attracts very limited weight.
20. Nonetheless, the proposal would provide social and economic benefits, initially through the construction phase, and then after with delivery of the housing. There would likely be a modest increase in the use of local services through the

³ Appeal Refs APP/Y1138/W/20/3244550 and 3255135

⁴ Appeal Ref: APP/U1105/W/21/3279651

⁵ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

increased footfall. Given the scale of the development, these benefits would be small and would not outweigh the conflict with the development plan. An absence of respective harms to the Coastal Preservation Area and the Green Wedge designations are neutral factors in the balance.

21. Drawing my assessment together, there are no other considerations, including the Framework, that serve to outweigh the conflict with the development plan in this case.

Conclusion

22. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR