



Appeal Decision

Site visit made on 7 June 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal Ref: APP/U1105/W/21/3286468

Land South of 97 Beer Road, Beer Road, Seaton

- 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 A Bullivant & H Roberts against the decision of East Devon District Council.
 - The application Ref 20/1775/OUT, dated 11 August 2020, was refused by notice dated 14 May 2021.
 - The development proposed is outline planning application for the construction of 1 no. dwellinghouse including the construction of new access (matters of appearance, landscaping layout and scale reserved).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address of the site from the Council's decision notice as this detail was absent from the application form.
3. The appeal application was made in outline with all matters save for access reserved for future consideration. I have considered the appeal on this basis and treated any plans, layout details and elevations as indicative in nature.

Main Issues

4. The main issues are:
 - whether the location of the proposal accords with local policies that seek to locate development within Built Up Area Boundaries in order to promote sustainable patterns of travel and prevent unregulated development across the countryside;
 - the effects of the proposal on the character and appearance of the area and the Coastal Protection Area; and
 - the effects of the proposal on the Beer Quarry Caves Special Area of Conservation (SAC) and biodiversity interests of the site.

Reasons

Location of development

5. The East Devon Local Plan (2016) sets out its spatial strategy for development within the plan area through the use of 'Built Up Area Boundaries' (BUABs) for both larger settlements and smaller villages of a scale considered acceptable to accommodate new development. The aim of Strategy 6 is to locate new

- development within BUABs to complement the objectives of sustainable development, through minimising the need to travel by private vehicle, and protect the intrinsic character of the countryside through preventing unregulated development and limiting the outward expansion of settlements.
6. The appeal site lies on the western edge of Seaton and comprises a steeply sloping parcel of low quality grazing land. A few mature trees sit at the uppermost plateaued part of the site which fronts onto Beer Road. The boundary with the road is currently a post and wire fence which allows an open view across the site towards the coastal landscape beyond.
 7. Whilst the BUAB includes two dwellings and their gardens to the northern side of the road and also includes the dwelling to the east and others to the south, the appeal site is deliberately excluded from it. It does not share any of the domestic characteristics of the areas within the BUAB immediately adjoining the site. The appeal site is therefore in the countryside in planning policy terms. Strategy 6 indicates that communities can prepare neighbourhood plans that allocate sites and/or include criteria based policies for promoting development beyond BUABs, but that has not happened for Seaton and the site remains unallocated and in the countryside.
 8. Strategy 7 of the Local Plan sets out that development in the countryside will only be permitted where it is in accordance with a specific Local Plan or neighbourhood plan policy that permits such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located. The list of features and attributes that the Policy seeks to protect includes, landform and patterns of settlement, important natural and manmade features and important views from a public place.
 9. Whilst I note my colleague's view in an appeal decision for a nearby site¹ that it was considered to be functionally well related to Seaton and in a suitably accessible location, this is not my reading of Strategy 6 on its specific wording. The Strategy makes a clear distinction between what is proposed *within* the BUABs and what provision should exist to support development outside of the same. The two parts of Strategy 7 do not operate independently, a proposal must be supported by a policy *and* it must not harm the distinctive landscape, amenity or environmental qualities of the area. I return to the latter considerations in the second main issue, but in principle terms, there is no policy support for development of the site given its location as there is no allocation or criteria-based policy in a neighbourhood plan or the local plan which supports development thereof.
 10. I accept that the site is approximately 950 metres from Seaton's town centre with its range of facilities and that a footway provides connectivity into town. I also note the close proximity of a bus stop within around 100 metres which offers a range of regular services. In this context, some support could also be garnered from Local Plan Policy TC2 in respect of minimising the need to travel by car and paragraph 79 of the National Planning Policy Framework (the Framework) as it too seeks to promote development and to locate housing in rural areas where it will enhance or maintain the vitality of rural communities. As such, whilst the site would not be unacceptably remote from the town and this lessens the conflict with Strategy 6, it would still not wholly comply with the same.

¹ Appeal ref: APP/U1105/W/16/3155322

11. For the above reasons, the proposal conflicts with, in particular, Local Plan Strategies 6 and 7 which, amongst other things, seek to locate development within BUABs in order to promote sustainable patterns of travel and prevent unregulated development across the countryside.

Character, Appearance and Coastal Protection Area

12. The site lies within the Coastal Protection Area (CPA) which is a local designation protected by Strategy 44 of the Local Plan which aims to preserve visual openness and views to and from the sea.
13. There is clearly a relationship between the site and the edge of the built up area, with dwellings visible to the north and east of the site. However, when travelling along Beer Road, the continuous row of housing breaks at the appeal site and its openness is a striking contrast to the otherwise built up nature of the area. Despite the existence of mature trees, the appeal site reveals important views to the coast and surrounding landscape which are not easy to obtain from other local public vantage points. Though there is another dwelling located further to the west along Beer Road, Pembroke House, it is set down from the road and nestled in a spacious, verdant plot and does not appear connected to the built up area in the same way. In this sense, the appeal site forms part of the soft transition from the built up area to the countryside and its visual openness and undeveloped nature are important contributors to the landscape and visual attractiveness of the area.
14. There is no physical separation of the appeal site from the larger paddock of which it forms a part, though it is stated that the latter would remain undeveloped and that none of the existing trees would be affected. However, the submitted Bat Activity Survey² mitigation proposals include the construction of a hedge along this boundary and between the two respective parts of the site to a minimum height and width of 2 metres. This appears to suggest that a visual obstruction of some form would likely occur as a result of the development in any case. Though I accept that the proposal is made in outline form which would give the Council future control over the scale, siting and appearance of the dwelling, on the basis of the evidence before me, the driveway, elements of the landscaping and dwelling itself would inevitably interrupt the undeveloped and open qualities of the appeal site and appear to further extend the edge of the settlement.
15. I have given consideration to the Certificate of Proposed Lawful Development³ which authorises the construction of a 2 metre fence along Beer Road. The appellant offers to accept a condition that would prevent the construction to preserve the 'important public viewpoints' and achieve a positive, permanent public benefit. The adjacent wall at Whiteacre, allegedly constructed relatively recently, is evidence of the harm that can be caused to visual openness through such features. However, I consider that the likely harm from inevitably visible built features, domestic paraphernalia or deliberate landscaping features through the development would still erode the openness and pleasantly green, undeveloped nature of the site to a similar degree as the construction of a fence or wall in any case.

² Bat Activity & NVC Survey (Ecologic Consultant Ecologists, Jul 2020)

³ Planning permission ref: 21/1086/CPL

16. I note that other schemes have been permitted elsewhere within the CPAs of Beer⁴ and separately in Branscombe⁵. I have limited information about why those were considered acceptable but, in my view, the site and case-specific merits cannot be so similar as to justify allowing the appeal. Similarly, I do not regard the physical attributes or policy considerations in relation to the scheme at Pembroke House⁶, within the BUAB and outside of the CPA, so similar so as to afford it weight in favour of the scheme.
17. In view of the above, the appeal proposal would harm the character and appearance of the area and detract from the openness of the CPA, contrary to, in particular, Local Plan Policy D1 and Strategies 7 and 44, which seek to preserve visual openness and protect the distinctive landscape, amenity, views and environmental qualities of the countryside.

SAC and Biodiversity

18. The appeal application was submitted with a Preliminary Ecological Appraisal (PEA) (Richard Green Ecology, Dec 2018) and a subsequent (Bat Activity Survey). Natural England's consultation response infers that both of these documents were reviewed but that a specific 'Bat Mitigation Strategy' would be required to inform an Appropriate Assessment under the Habitats Regulations⁷. Whilst the Council's officer report does not specifically repeat the findings of the Bat Activity Survey, it is clear that the matter was not determinative given that the circumstances which could have led to the granting of planning permission were not present.
19. It appears to me that the underlying evidence base for a bat mitigation strategy exists across the submitted PEA and Bat Activity Survey, though whether it is in the recommended format or specifically detailed enough as a mitigation strategy to provide the necessary certainty for an AA is unclear. However, as the appeal is failing for other reasons in any event, it is not necessary for me to consider this matter further.

Other Matters

20. I note that there were no objections from the highways consultee in respect of the provision of an access to the site. This and the lack of harm in respect of living conditions of neighbouring occupiers, trees, and planning conditions that can remedy any other potential harms are only capable of attracting neutral weight in the overall balance.
21. I am also cognisant of the number of objections to the scheme. Whilst these have been taken into consideration, they do not indicate that I should determine the appeal other than in accordance with S38(6) of the Planning and Compulsory Purchase Act (2004). Similarly, whilst mindful of the desire for consistency in the planning process, I am aware that I am not bound by previous decisions on the same or nearby sites. My views have been reached based on the evidence and from my own observations in relation to the specific proposal before me.

⁴ Planning permission ref: 18/1957/MOUT

⁵ Planning permission ref: 15/1291/MOUT

⁶ Appeal ref: APP/U1105/W/20/3252871

⁷ The Conservation of Habitats and Species Regulations, 2017, as amended

Planning Balance and Conclusion

22. In respect of both its location and effects on the character and appearance of the area and CPA, the proposal conflicts with the development plan. There are aspects, such as its relative proximity to the town centre and accessibility, that lessen the degree of conflict, but my finding is that the scheme does not comply with the development plan when read as a whole.
23. In terms of the benefits of the scheme, the proposal would deliver an additional dwelling to the local housing stock. This would very modestly increase opportunities for accessing housing and also deliver economic advantages to the area, throughout both the construction phase and thereafter throughout the occupation of the dwelling.
24. However, even taken collectively, the modest benefits that would result from the proposal are not capable of outweighing the harm and, in the absence of any other considerations of sufficient materiality, do not indicate that a decision should be made other than in accordance with the development plan.
25. For the foregoing reasons and taking into account all other matters, the appeal is dismissed.

Hollie Nicholls

INSPECTOR