
Appeal Decision

Site visit made on 27 October 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/U1105/W/21/3287929

18 Hartley Road, Exmouth, Devon EX8 2BQ

- 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 Martin Jackson against the decision of East Devon District Council.
 - The application Ref 20/2701/FUL, dated 2 December 2020, was refused by notice dated 9 July 2021.
 - The development proposed is single bed dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site is located within the zone of influence of Pebbled Heaths and Exe Estuary Special Protection Areas (SPA's). Consequently, the proposal has been considered in the context of statutory duties set out within the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
3. The appellant submitted a planning obligation under Section 111 of the Local Government Act 1972. I asked the parties for further comments on the amount secured, and I have considered the implications pursuant to the Habitats Regulations and dealt with the matter as a main issue under the appeal.
4. The Cranbrook Development Plan Document was adopted by the Council on 19 October 2022. The parties were given an opportunity to comment on any implications for the matters being considered under the appeal. It was subsequently confirmed there were no implications.

Main Issues

5. The main issues are the effect of the proposal on:
 - (a) Pebbled Heaths and Exe Estuary SPA's
 - (b) the character and appearance of the area; and
 - (c) the living conditions of neighbouring occupiers in relation to the loss of open space.

Reasons

Pebbled Heaths and Exe Estuary SPA's

6. The site is located within the zone of influence of Pebbled Heaths and Exe Estuary SPA's, which provide recreational resources for the local community. The proposal would lead to an additional dwelling and increased recreational pressure on the SPA's, which in combination with other small scale residential developments in the area would result in likely significant effects.
7. The appellant has submitted a planning obligation under Section 111 of the Local Government Act 1972. This secures a financial contribution of £354. Such contributions are necessary pursuant to the South East Devon European Site Mitigation Strategy 2014, Mitigation Charging Zones 2021, and Strategies 47 and 50 of the East Devon Local Plan 2016.
8. However, whilst I appreciate the amount was correct at the time of the original application, it is now less than the £367.62 required under the most recent version of Mitigation Charging Zones 2021. I must make my decision based on the most up to date evidence.
9. In this context, I can only conclude that the proposal fails to make the necessary contribution to the regional habitat mitigation strategy, which was developed in consultation with Natural England as the statutory nature conservation body under the Habitats Regulations.
10. The differences may seem negligible in ordinary terms, but I am bound by the precautionary principle when considering adverse effects under the Habitats Regulations. Therefore, due to the shortfall, I cannot be satisfied that there is sufficient mitigation.
11. I am mindful that the appellant made a direct payment to the Council pursuant to addressing the shortfall. However, it is not clear that this would be captured under the terms of the original planning obligation¹, and it was not supported by a fresh planning obligation. Consequently, given that there is no legal commitment to use the payment in a particular way, I cannot give it any weight in my assessment.
12. Whilst there is some flexibility under the appeal process to seek comments from the parties on particular matters, I am mindful of guidance² and the principles that the appeal process should not be used to evolve a scheme and decisions should not be unduly delayed because of planning obligations.
13. In this context, the appellant was given a fair opportunity to clarify and remedy the shortfall within the original planning obligation. It would be unreasonable for me to delay my decision any further or seek comments on the subsequent direct payment and lack of fresh planning obligation. Therefore, I have concluded based on the evidence in front of me at this time.
14. Overall, adverse effects on the integrity of Pebbled Heaths and Exe Estuary SPA would not be sufficiently mitigated and the proposal would conflict with Strategies 47 and 50 of the East Devon Local Plan 2016, and the Habitats Regulations.

¹ Secured by Section 111 of the Local Government Act 1972.

² Procedural Guide: Planning appeals – England 2022

15. Among other things, these set out that development proposals that would cause a direct or indirect adverse effect upon internationally and nationally designated sites will not be permitted unless prevention, mitigation and compensation measures are provided, and the integrity of international sites is maintained.

Character and Appearance

16. The site is located at 18 Hartley Road, to the rear of the building of apartments and directly adjacent to a row of two single storey dwellings. The site is made up of open space and is of a similar size to the plots of land upon which the two single storey dwellings sit. The site is highly contained by surrounding development and largely screened from public view.
17. The proposal would construct a single bed dwelling at the site. It would be consistent with the scale and appearance of the two single storey dwellings directly adjacent. The proportional relationship between the size of the site and the size of the dwelling would also be consistent in the same context.
18. There is no evidence, whether through technical standards or other guidance, that the proportional relationship is cramped in and of itself, or that the proposal would comprise overdevelopment. In the absence of such evidence, the proposal would not be discordant with the prevailing pattern of development.
19. Overall, the proposal would not harm the character and appearance of the area and would comply with Strategy 6 and Policy D1 of the East Devon Local Plan 2016 and Policy EB2 of the Exmouth Neighbourhood Plan 2019. Among other things, these policies require new development to be compatible with the character of the site and its surroundings.

Living Conditions of Neighbouring Occupiers

20. The site currently provides a modest area of open space which helps break up the urban environment, providing a degree of openness and relief to the benefit of the living conditions of neighbouring occupiers. However, the site is located in close proximity to the town centre, where a number of larger areas of open space provide significant opportunities for recreational activities and are easily accessible. For example, at Exmouth's beach.
21. As such, neighbouring occupiers are not entirely reliant on the existing modest area of open space, and there would be areas of courtyard suitably retained, complimenting other existing areas of courtyard. On balance, the loss of open space would be mitigated by ease of access to larger areas of open space in the locality, which provide significant recreational opportunities, and the retention of courtyards, which provide immediate access to outdoor space.
22. Overall, the proposal would not harm the living conditions of neighbouring occupiers in relation to the loss of open space and would accord with Policy D1 of the East Devon Local Plan 2016 and Policy EB2 of the Exmouth Neighbourhood Plan 2019. Among other things, these policies seek to manage access to open space.

Conclusion

23. Whilst the proposal is acceptable in relation to effects on the character and appearance of the area, and the living conditions of neighbouring occupiers, the proposal is not acceptable in relation to effects on the Pebbled Heaths and Exe Estuary SPA's, where there is conflict with the development plan and the Habitats Regulations.
24. Consequently, in the absence of material considerations indicating that a decision should be taken otherwise than in accordance with the development plan, and acknowledging the legal duty within the Habitats Regulations, the appeal must be dismissed.

Liam Page

INSPECTOR