
Appeal Decision

Site visit made on 13 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/22/3298012

The Store, Little Bicton Place, Exmouth EX8 2SS

- 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 R Pearcey against the decision of East Devon District Council.
 - The application Ref 21/3187/FUL, dated 7 December 2021, was refused by notice dated 1 March 2022.
 - The development proposed is change of use from store to dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from store to dwelling at The Store, Little Bicton Place, Exmouth EX8 2SS in accordance with the terms of the application, Ref 21/3187/FUL, dated 7 December 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matters

2. The site is located within the zone of influence of Pebblebed Heaths and Exe Estuary Special Protection Areas (SPAs). 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 in support of the proposal and the implications have been dealt with as a main issue under the appeal.
4. It is common ground that the lawful use of the site falls within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). The implications have been dealt with as a main issue when assessing whether the loss of an employment use would be acceptable.
5. 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

6. The main issues are:
 - (a) whether the loss of an employment use would be acceptable; and
 - (b) the effect on Pebblebed Heaths and Exe Estuary SPAs.

Reasons

Loss of an Employment Use

7. The site is located at The Store on Little Bickton Place. Whatever its past uses, it is common ground that the site could be used for any number of purposes under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). Whilst the flexibility of use should be beneficial to future employment prospects in theory, there are readily identifiable practical constraints that could have serious impacts on the area. This is because it is largely residential¹ in nature with a close knit pattern of development, and the site itself has existing space and infrastructure constraints.
8. In this context, without sufficient control over the nature or intensity of future Class E uses, the loss of an employment use would be acceptable. For example, among other things identified by the appellant, the site could give rise to assembly or leisure uses that generate significant numbers of visitors, or food related uses that generate significant numbers of service deliveries. Given the prevailing constraints, the nature and intensity of these uses would not be possible without significant impacts on the local highway network. Altogether, there is a reasonable likelihood of the site coming into an employment use that is of an incompatible nature and intensity.
9. Whilst the site is located in close proximity to the town centre, it is not necessarily the case that people would originate from locations that are in walking distance, or that the level of demand for travelling by private car would be acceptable. As such, proximity to the town centre has only carried limited weight in my assessment. I recognise that there may be some compatible uses under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended). However, there is no control over the end user and the reasonable likelihood of the site coming into an employment use that is of an incompatible nature and intensity remains.
10. Overall, the loss of an employment use would be acceptable, and the proposal would comply with Strategy 32 of the East Devon Local Plan 2016. Among other things, the first criterion of Strategy 32 sets out that planning permission will not be granted unless continued use would significantly harm the quality of a locality whether through traffic, amenity, environmental or other associated problems.
11. The structure of Strategy 32 means it is not necessary to make a finding on the other criterion, because each criterion is mutually exclusive in its application. Similarly, it is not necessary to consider the appellant's other contentions relating to a fallback position or precedent derived from other changes of use in the locality, as a finding on these matters would not change my conclusions on the loss of an employment use.
12. Policy EE3 of the Exmouth Neighbourhood Plan 2019 only offers support to proposals where the existing site is no longer economically viable, and the site has been marketed at a realistic price for a minimum of one year. However, the absence of this information or support from the policy does not necessarily equate to an absolute requirement to find conflict with the development plan as a whole on this main issue.

¹ Despite limited instances of other uses nearby, such as commercial garage premises and a school, where there is no evidence that the intensity or nature of these uses are incompatible with the prevailing residential context.

13. Indeed, the supporting text makes clear that the change of use from employment generating uses to residential should not be allowed unless the changes can be supported by other local plan policies. Policy EE3 has been applied in this context, and the change is supported through compliance with Strategy 32 of the East Devon Local Plan 2016.

Pebblebed Heath and Exe Estuary SPAs

14. The site is located within the zone of influence of Pebblebed Heath and Exe Estuary SPAs, which provide recreational resources for the local community. The proposal would lead to an additional dwelling and increased recreational pressure on the SPAs, which in combination with other small scale residential developments in the area could result in likely significant effects.
15. The appellant has submitted a planning obligation under Section 111 of the Local Government Act 1972. This secures a financial contribution of £367.62 and is 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.
16. In considering that the proposal would make the required 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, I am satisfied that adverse effects on the integrity of the SPAs would be avoided or fully mitigated. As a result, the proposal is acceptable in this regard and would accord with the aforementioned policies of the development plan, and the Habitats Regulations.

Other Matters

17. The site is within the Exmouth New Conservation Area, where the character of the dwelling would assimilate into the existing context and the external changes to the appearance of the building to facilitate the proposal would be limited. Therefore, it is considered the character and appearance of the conservation area would be preserved by the proposal in accordance with statutory duties under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
18. I acknowledge other interested parties have objected to the proposal on the basis of overlooking and noise, among other things. However, the proposed dwelling would not be out of keeping with the prevailing residential context. Furthermore, the limited scale of the proposal would not give rise to discordant or harmful levels of overlooking or noise, which already exist to some degree due to the close knit pattern of neighbouring development.
19. Whilst I appreciate that there may be parking and noise related impacts associated with construction, I am satisfied that given the limited scale of the proposal, and the temporary nature of such impacts, a pre commencement planning condition securing a construction and environmental management plan would be a sufficient form of mitigation to make the proposal acceptable in planning terms.

Conditions

20. The appellant raised no objection to the conditions suggested by the Council. Both parties were given the opportunity to comment on the need for a planning condition to secure a construction and environmental management plan in response to concerns from other interested parties about potential construction impacts due to site space constraints.
21. The Council supplied suggested wording in this regard. The appellant also supplied suggested wording, without prejudice to anything suggested by the Council. I have accepted the Council's suggested wording in the interests of detail and precision, with minor amendments for clarity.
22. All conditions in the attached schedule have been considered against the National Planning Policy Framework and Planning Practice Guidance and are deemed necessary to make the proposal acceptable in planning terms.
23. Standard conditions setting out time limits for commencement and securing compliance with the approved plans are necessary to provide certainty. Further details in relation to materials for windows and roof lights are necessary to preserve the character and appearance of the area, including the conservation area.
24. Paragraph 54 of the National Planning Policy Framework sets out that planning conditions should not be used to restrict permitted development rights unless there is clear justification to do so.
25. In this context, there are prevailing site space constraints, and it is necessary to restrict permitted development rights to avoid further extensions that might result in cramped development, in the interests of the character and appearance of the area, including the conservation area, and the living conditions of neighbouring occupiers.
26. A pre commencement condition relating to a construction and environmental management plan has been deemed necessary to avoid the adverse effects that may arise if development was permitted to proceed without prior controls due to the likely extent of works required to the building in conjunction with the prevailing site space constraints.

Conclusion

27. For the reasons given, the appeal is allowed and planning permission is granted in accordance with conditions in the attached schedule.

Liam Page

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed below:
 - a. 621.2. Proposed Floor Plans 07.12.21
 - b. 621.3. Proposed Elevation 07.12.21
 - c. 621.4. + location Proposed Combined Plans 07.12.21
3. Notwithstanding the submitted details, details of the materials to be used for the windows and roof lights to include profiles, materials and finishes shall be submitted to and approved in writing by the Local Planning Authority prior to their installation. The works shall be carried out in accordance with the approved details. For the avoidance of doubt uPVC is not an acceptable material for the windows.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no works shall be undertaken within the Schedule 2 Part 1 Classes A, B, C or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or other pool, [other than any enclosure approved as part of the landscape management scheme].
5. A construction and environmental management plan (CEMP) shall be submitted and approved by the Local Planning Authority prior to any works commencing on site and shall be implemented and remain in place throughout the development. The CEMP shall include at least the following matters : Air Quality, Dust, Water Quality, Lighting, Noise and Vibration, Pollution Prevention and Control, and Monitoring Arrangements. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. There shall be no high frequency audible reversing alarms used on the site.

End of Schedule