



Appeal Decision

Site visit made on 15 November 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal Ref: APP/U1105/W/22/3296441

Land to north east of Atlantis, Sowden Lane, Exmouth, Devon

- 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 Robert Hilton against the decision of East Devon District Council.
 - The application Ref 21/1512/FUL, dated 27 May 2021, was refused by notice dated 21 October 2021.
 - The development proposed is described as "Sustainable zero carbon live/work development to include creation of a productive landscape rich in biodiversity".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the location of the site is suitable for residential development, having particular regard to the desirability of maintaining the separation between Lympstone and Exmouth.

Reasons

3. Positioned close to the top of a steeply sloping hillside, the appeal site comprises a paddock of mostly pasture. The site is bounded on two sides by Clay Lane, which is a single lane road that links Sowden Lane to Courtlands Lane. The site boundaries are mostly defined by hedgerows, with new hedge planting having occurred either side of the access onto Clay Lane.
4. Along Courtlands Lane there is a row of terraced, semi-detached and detached houses. These houses form a distinct linear group, and due to their elevated hilltop position, they are a prominent feature. Between these houses and the appeal site there is a paddock, to one side of which is a polytunnel and miscellaneous storage. To the southern boundary of the appeal site there are paddocks and fields.
5. There is a house and its garden adjoining the western site boundary, but it is much lower down the hillside than the appeal site, being part of a small discrete cluster of residential properties in the valley. Beyond the lane to the north is Sowden Orchard, and as this property is within a

generous plot and set back from the road, it maintains the openness of the area. There are a few other scattered, isolated dwellings present, such as Atlantis, and these are mostly positioned within generous plots, thereby retaining the open appearance. The character and appearance of the area around the appeal site is one of an open, rural nature within which there is sporadic residential development. The appeal site contributes towards this open nature and is neither part of a village nor even a smaller settlement, nor would it infill a gap between other houses. Rather it would be a scattered residential development in the countryside within a prominent hill-top location.

6. The topography is such that there is a defined vertical separation between the appeal site and the nearby dwellings. The provision of an additional home and work place building would serve to erode the spacious separation that exists between the cluster of houses lower down the hillside with the row of dwellings along Courtlands Lane. Although there is some local support for the proposal, this would not outweigh the harm in that the dwelling would encroach residential development into what is an open countryside location. The scheme would be a self-build home for a local family, but this would be achieved through the unacceptable erosion of the open nature of the site and the contribution it makes to the rural appearance of the area and the separation that exists between the nearby settlements.
7. The buildings would maximise sustainable energy benefits, minimise waste and carbon footprint, as well as enhance biodiversity, and these are positive attributes of the scheme. However, the totality of the size of the buildings is such that they would have a large footprint, spreading across much of the breadth of the site, and the presence of built form within an open countryside location would be intensified. Although single storey, the elevated position of the buildings would make them a prominent addition within the surrounding area, including from long distances away, and particularly so given the extensive use of glazing which would have an eye-catching impact. The retention and enhancement of trees and hedgerows would have a biodiversity benefit and would help to minimise the visual impact of the buildings. Nevertheless, landscaping cannot be relied upon to screen development for its lifetime. Having regard to the attractive panoramas that exist from the site over the Exe Estuary it does not follow that future occupiers of the property would wish to screen these views by landscaping.
8. There are a variety of services and facilities within Lymington and Exmouth, including a rail service. In addition to the road network there are several rights of way, with the Exmouth-Exeter cycle trail nearby. However, accessing services and facilities would necessitate using the narrow, single lane roads that are unlit and have no footways. Near the appeal site the roads have no verges, being enclosed by hedges with no public passing places, and there would be a heavy reliance for all users

of the highway to utilise private accesses and land to pass each other. The nature of the lanes are such that anyone using them, including those familiar with them, would have to be highly alert at all times to the presence of other users so as to avoid conflict.

9. It might be the day-to-day needs of the appellant and his family and the businesses could be met without having a car, but it cannot be assumed that future occupiers and users could or would be able to do the same. The propensity to walk or cycle is influenced not only by distance, but also by the quality of the experience. For some pedestrians and cyclists the distances to nearby services and facilities and the physical demands necessitated by the nature of the topography would mean that sustainable means of transport to access the site would not be an option. Even with the presence of nearby rights of way, the use of such routes during darkness and in the winter during adverse weather would not be an alternative for many.
10. The existing use of the site would generate some journeys, although it is unlikely that the number of trips would be at the same level as that which would arise from the residential and business use of the site. Having regard to the particular circumstances of the location, it is likely that future occupants and users would be reliant on motor vehicles with the consequential environmental harm resulting from increased journeys and associated pollution.
11. The main parties have cited other application and appeal decisions in support of their cases. Of the appeal decisions referred to by the appellant, some were determined under a different development plan and national policy, and this limits the weight I can attribute to them, as is the case with appeal ref:APP/U1105/A/14/2226269. Of the other cases cited by the appellant one is for a dwelling in a rear garden in a village in a very different area (ref:APP/U1105/W/20/3248042), whilst another is for a conversion scheme (ref:APP/U1105/W/18/3218286). The scheme referred to under ref: APP/U1105/W/17/3183352 was also for a village in a different area, as well as being much closer to the settlement.
12. There has been recent development near the appeal site, but again there are significant differences between these and the proposal before me. The swimming pool at Lympstone Manor would have been considered under a different suite of policies than are relevant for a new dwelling. Atlantis was a replacement dwelling, and other houses nearby have occurred through conversion schemes. Of the houses recently allowed with appeal ref:APP/U1105/W/21/3282445 this site is immediately adjacent to the built up edge of Lympstone village, and has a legible visual relationship to the settlement. Given these differences, none of the cases cited forms a precedent for allowing the appeal scheme.

13. Having regard to my findings, the proposed dwelling and work unit would not be in a location suitable for residential development. The site is well away from the distinct settlements of Lymptone and Exmouth, and although there are other dwellings nearby, they are either isolated single dwellings or form part of the discrete groups of homes that are found within the countryside between nearby settlements. The National Planning Policy Framework (the Framework) seeks to promote sustainable development in rural areas. Whilst the scheme would be carbon-zero, in accordance with objectives of the Council's Climate Change Action Plan (2020), the location of the development would not accord with other sustainable objectives of the Framework, including those that seek to promote alternative means of access other than through private vehicles.
14. The Framework makes an exception for homes in rural areas that are of truly outstanding or innovative design. The sustainable design and functioning of the buildings would be positive benefits of the scheme. However, the Framework also requires that such dwellings are sensitive to the defining characteristics of the local area, and fit in with the overall form and layout of their surroundings. Whilst there are a variety of ages and styles of dwellings nearby, the proposed buildings would fail to reflect the pattern of development that occurs in the area, as well as eroding openness, contrary to this requirement.
15. The proposal would fail to accord with Strategies 7 and 8 of the East Devon Local Plan (2016) (LP), and Policies 2 and 3 of the Lymptone Neighbourhood Plan (2015). These policies seek amongst other things, that development in the countryside does not harm distinctive land forms and patterns of settlement. In addition, development proposed within green wedges should not harm the character and purpose of these areas by adding to existing sporadic development. The scheme would also fail to accord with the objectives of LP Policy TC2, which seeks amongst other things to locate development so as to be accessible by pedestrians, cyclists and public transport, and minimise the need to travel by car.
16. The appellant has drawn my attention to policies within an emerging LP. However, this plan is at an early stage of development and has not yet been submitted for examination. As it is likely to change, the weight I can attribute to it is limited.

Other Matters

17. The site is within 10 km of the Exe Estuary and Pebblebed Heaths Special Protection Areas (SPAs), whereby a net increase in the number of dwellings would be unacceptable without appropriate mitigation of the impact of future occupiers upon these important sites. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with

other schemes. A financial contribution for mitigation measures has been secured, and the Council consider it would mitigate the impact of the proposal upon the SPAs. I will return to this matter below.

18. Concerns regarding the inconsistency of the Council's decision making and the actions of local residents and Councillors, relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Planning Balance

19. The Council acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11(d) of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
20. The construction phase of the development would have a small, time-limited economic benefit to the area, and the work unit would provide a base for local businesses. An additional dwelling for a local family would also be provided. The scheme would also have environmental benefits arising from biodiversity improvements and from being a zero carbon home that would minimise waste and pollution. Such benefits would carry some weight.
21. Weighing against these benefits would be the significant environmental harms arising from the development of the site. The proposal would deliver a high-quality home for a local family, but in doing so would cause significant harm to the distinct character and appearance of the area. This harm would be exaggerated by the location of the home and work unit in an area that would increase vehicular trips.
22. The objectives of the policies referred to above are consistent with those in the Framework that requires development to be sympathetic to local character, as well as encouraging sustainable modes of travel. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse environmental impacts in this case amount to cumulative environmental harm which carries substantial weight, and this significantly and demonstrably outweighs the benefits deriving from the scheme when assessed against the policies in the Framework as a whole.
23. Returning now to the matter of the protected Exe Estuary and Pebblebed Heaths, if I had come to a different conclusion, it would have been necessary for me to undertake an Appropriate Assessment and further consideration of the likely effectiveness of mitigation measures. In doing so I would have had regard to the provisions of the S111 undertaking and whether there would be significant effects arising from the proposal, either alone or in combination with other schemes, as I would have to be certain that the integrity of the protected sites would

not be adversely affected. However, as I am dismissing the appeal for other reasons, this assessment has not been necessary.

Conclusion

24. The adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the conditions suggested during the Council's consideration of the application would not overcome these substantial harms. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR