
Appeal Decision

Site visit made on 29 November 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 December 2022

Appeal Ref: APP/U1105/W/22/3303671

**Land below Tree Tops, Toad Pit Lane, West Hill, Ottery St Mary,
Devon EX11 1LQ**

- 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 M Huxtable against the decision of East Devon District Council.
 - The application Ref 21/2531/FUL, dated 23 September 2021, was refused by notice dated 2 February 2022.
 - The development proposed is two storey detached dwelling and change of use of land to residential curtilage.
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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.

Reasons

3. The appeal site is positioned upon a steeply sloping hillside, to the northern side of Toad Pit Lane. To one side is an access track to a nearby residential property, and fences delineate the northern and eastern boundaries. Set back behind a concrete apron is a gated vehicular access into the site, with an overgrown track extending from it. Much of the site comprises rough grass and young gorse, with clusters of young and more mature trees in discrete groups close to the site boundaries.
4. Beyond the northern fence are paddocks and a mown area of grass, and the heavily treed garden of Tree Tops stretches along the western boundary. This is one of several residential properties along Toad Pit Lane, most of which are positioned within large gardens and this creates a loose knit scatter of sporadic development. Separating Tree Tops from the residential development extending out from the village of West Hill is a steeply incised valley, with woodlands and fields to either side of the watercourse that flows along the valley bottom. Woodlands bound the eastern and southern site boundaries, and their presence along with the

open nature of the appeal site creates a distinct and broad break in the residential properties along Toad Pit Lane. The appellant considers the site to provide a residential infill opportunity that would be empathetic with its surroundings. However, as fields and woods separate the site from the village, the proposal would extend scattered residential development into the open countryside, rather than consolidate a gap between neighbouring homes.

5. Toad Pit Lane provides access to the village of West Hill within which there are a variety of services and facilities, including a school, shop and post office. Accessing these services and facilities would necessitate using the narrow, single lane road that is unlit and has no footways. Near the appeal site the road has no verges, being enclosed by trees and fences. There are no public passing places to the lane, thereby necessitating a reliance of all users of the highway upon private accesses and land to pass each other. The nature of the lane is such that anyone using it, including those familiar with it, would have to be highly alert at all times to the presence of other users so as to avoid conflict.
6. It might be that the day-to-day needs of the appellant could be met through using electric vehicles, but it cannot be assumed that future occupiers 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 steep nature of the topography would mean that sustainable methods of transport would not be an option. The use of such routes during hours of darkness and in the winter during adverse weather would not be an alternative for many. Having regard to the particular circumstances of the location, it is likely that future occupants would be reliant on motor vehicles with the consequential environmental harm resulting from increased journeys.
7. The appellant refers to the site having little other useful role, and that government policy seeks to promote sustainable development as well as boost the supply of housing. Nevertheless, even though the dwelling would be a self-build home, it would not be in a suitable location for residential development as future occupiers would be reliant upon private cars. The appellant has suggested that future occupiers could be conditionally required to use electric vehicles, but such a condition would be very difficult for the Council to continually monitor and enforce for the lifetime of the development, thereby failing one of the conditions tests provided in the National Planning Policy Framework (the Framework).
8. The dwelling would be a self-build home that could be delivered, and it would have a high degree of sustainability, including minimising carbon footprint. However, these benefits would not mitigate the significant and unacceptable harms that would arise from the proposal, particularly as the scheme would be contrary to objectives of the Framework that seeks

to promote sustainable development, including promoting pedestrian and cyclist movements.

9. The proposal would also fail to accord with Strategies 5B, 7, and 27 and Policy TC2 of the East Devon Local Plan (2016) (LP). These seek amongst other things, to direct development to particular locations, to protect the countryside, to encourage safe and accessible means of transport with low environmental impact, and to locate development so as to be accessible by pedestrians, cyclists and public transport, minimising the need to travel by car.

Other Matters

10. The site is within 10 km of the Pebblebed Heaths Special Protection Area and Special Area of Conservation, 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 through a S111 undertaking, and the Council consider it would mitigate the impact of the proposal. I will return to this matter below.
11. Local residents have raised a number of matters, including the suitability of the site access, the need for an ecological survey, and the visibility of the scheme to nearby residents. Of those concerns relevant to the planning considerations of the case, following my findings on the main issue, I have no need to consider them further.

Planning Balance

12. 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.
13. The construction phase of the development would have a small, time-limited economic benefit, and there would be a small social benefit arising from the provision of an additional dwelling. The scheme would also have environmental benefits arising from its small carbon footprint. Such benefits would carry some weight, but weighing against these benefits would be the significant environmental harms arising from the development of the site. The proposal would deliver a high-quality self-build home, but in doing so would cause significant harm through being in a location that would increase vehicular trips.
14. In considering these matters, I have found conflict with the above referenced LP Strategies and Policy. The objectives of these are broadly

consistent with those in the Framework that requires sustainable development, including encouraging trips by walking and cycling, and weight can thereby be attributed to these policies. 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.

15. Returning now to the matter of the 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 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

16. The adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the conditions suggested by the parties 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