
Appeal Decision

Site visit made on 13 January 2023

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/W1145/W/22/3299973
Land at Torridge Road, Appledore EX39 1SF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr M Harris of Harco Trading Ltd against Torridge District Council.
 - The application Ref 1/0321/2022/FUL, is dated 23 March 2022.
 - The development proposed is erection of three dwellings and associated works.
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Decision

1. The appeal is dismissed and planning permission refused.

Application for Costs

2. An application for costs was made by Torridge District Council against Mr M Harris of Harco Trading Ltd. This application is the subject of a separate decision.

Procedural Matters

3. The Council failed to give notice of their decision within the prescribed period, but they have provided reasons within their appeal statement and appendices confirming why they would have refused planning permission. This has helped establish the main issues under the appeal.
4. The appellant submitted new evidence as part of the appeal in relation to coastal erosion. This new evidence does not fundamentally change the proposal and the Council has had a fair opportunity to comment under the appeal¹. Consequently, the new evidence has been accepted on this basis.
5. Appendices were submitted by the appellant a short period after their statement. In this particular case, I am satisfied that the Council and other interested parties would have had a fair opportunity to comment under the appeal and the late evidence has been accepted on this basis.
6. The appellant submitted further new evidence in relation to another appeal decision². This was submitted late at final comments stage and referred to an appeal that was decided well before the requirement to submit evidence to this appeal.

¹ an extension to the deadline for their appeal statement was granted

² APP/X1118/W/21/3271336

7. Consequently, the Council and other interested parties would not have had a fair opportunity to comment under the appeal, and this evidence cannot be accepted due to procedural prejudice.
8. The appellant submitted a Section 106 Unilateral Undertaking (the UU) during the course of the appeal. This has been accepted as a potentially legally binding document and the Council has had a fair opportunity to comment. Any potential implications relating to the UU have been dealt with in other matters.
9. The site is adjacent to North Devon Coast Area of Outstanding Natural Beauty (AONB) and the appeal has been decided in the context of statutory duties set out under Section 85 of the Countryside and Rights of Way Act 2000.
10. The site is adjacent to the Taw Torridge Estuary Site of Special Scientific Interest (SSSI) and the appeal has been decided in the context of statutory duties set out under Section 28G of the Wildlife and Countryside Act 1981.

Main Issues

11. The main issues are:
 - (a) whether the proposal is in an appropriate location for housing;
 - (b) the effect of the proposal on the character and appearance of the area including North Devon Coast AONB;
 - (c) the effect of coastal erosion on the proposal; and
 - (d) the effect of the proposal on the Taw Torridge Estuary SSSI.

Reasons

Location

12. The site is located on land at Torridge Road outside the Northam development boundary, which includes Appledore and Westward Ho!, and is a main centre in accordance with Policy ST06 of the North Devon & Torridge Local Plan 2018 (the NDTLP). Consequently, the site is within the countryside for the purposes of applying the spatial strategy within the NDTLP.
13. Policy ST07(4) of the NDTLP is clear that in the countryside, beyond local centres, villages and rural settlements, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location.
14. The site is also part of the coastal and estuarine zone and located within the undeveloped coast as defined within the NDTLP. Among other things, Policy ST09(7) of the NDTLP sets out that development will be supported where it is required because it cannot reasonably be located outside the undeveloped coast³.

³ This policy also deals with character and appearance, which is covered later in my decision under a separate main issue.

15. The broader policy expectation within the NDTLP is clear that housing should come forward in accordance with the spatial strategy, with a focus on the established settlement hierarchy and the developed coast. Consequently, and on its face, the proposal does not accord with the general thrust of the NDTLP.
16. Indeed, the appellant accepts that the proposal would not accord with Policy ST06 which supports directing development towards main centres, or Policy ST07(4) due to the site's countryside location and proposal's lack of exemption status.
17. However, there is a shortfall in housing land supply, as set out in the Great Torrington appeal⁴ and this is accepted by the Council. Consequently, the spatial strategy is not functioning as intended and there is a residual unmet need for housing. The appellant contends Policies ST06 and ST07(4) should not restrict the proposal in this context.
18. The appellant further argues that the proposal is compliant with Policy ST09(7) of the NDTLP as a result of the five year housing land supply deficit.
19. Notwithstanding the above contentions and considerations, engaging with Policy ST21 of the NDTLP helps provide greater clarity on the balance of these locational issues and managing the delivery of housing. In my judgement, it is decisive in the assessment of the main issue.
20. This is consistent with the reasoning set out in the Great Torrington appeal. I concur that it acknowledges the policy's importance in providing a framework for managing the delivery of housing based on maintaining a five year housing land supply and a particular methodology which is integral to the development plan. It also acknowledges that the way the policies operate effectively means that Policies ST06 and ST07 are overridden by Policy ST21.
21. Policy ST21(2) supports development outside of settlement limits where completions are below 90% of the annual requirement. In this context, it is established that Policy ST21(2) is currently engaged, something confirmed by the Council.
22. It is accepted the proposal is in a location⁵ and of a scale and nature commensurate to the deficit in required housing, and capable of being delivered in a timely manner in accordance with Policy ST21(2)(a) and (b).
23. However, while I accept that this policy recognises the need for land outside defined settlement limits to be considered, it is clear that the proposal departs from the spatial strategy on a number of fronts, not just because it is within the countryside but also because it is within the defined undeveloped coast.
24. In addition, as will be established under other main issues later in my decision, the proposal also fails to accord with other applicable policies within the NDTLP in all other respects and therefore would not comply with Policy ST21(2).

⁴ APP/W1145/W/19/3238460

⁵ Relative to services

25. Overall, I consider that the proposal would not be in an appropriate location for housing and would not accord with Policies ST06, ST07(4) and ST21(2) of the NDTLP. Among other things, these policies seek to ensure development comes forward in accordance the spatial strategy and that housing is delivered in appropriate locations.
26. The appellant argues that housing policies should carry limited weight in the context of the Council's five year housing land supply shortfall and that Policies ST06 and ST07(4) would not be restrictive in this context. I address this matter in my planning balance later in the decision.

Character and Appearance and North Devon Coast AONB

27. The North Devon and Torridge Joint Landscape Character Assessment (JLCA) confirms that the site falls within the Landscape Character Type 5b comprising Coastal Undulating Farmland. The special qualities of this landscape character type include its openness and uninterrupted sea views, which make a positive contribution to the character and appearance of the undeveloped coast and the setting of North Devon Coast AONB⁶.
28. Based on the evidence before me, including the previous appeal decision⁷ at the site, and from what I saw during my visit, I can conclude that the site is consistent with Landscape Character Type 5b of the JLCA. It is an unspoilt part of the coastline and enjoys an appreciable degree of openness in close proximity to the cliff edge, which helps to maintain uninterrupted sea views and frames views of the coastline from Northam Burrows within the AONB. Consequently, it makes a positive contribution to the character and appearance of the area.
29. Policy ST09(7) of the NDTLP sets out that development within the undeveloped coast and estuary will be supported where it does not detract from the unspoilt character, appearance, and tranquillity of the area. Policy ST14(e) of the NDTLP seeks to ensure development contributes to conserving the setting and special character and qualities of the North Devon Coast AONB.
30. Similarly, Policy DM08A(2) of the NDTLP requires great weight to be given to conserving the landscape and scenic beauty of designated landscapes and their settings. Policy NOR(k) only supports development that respects the landscape setting including the special landscape character and qualities of the AONB.
31. The proposal would erect three dwellings along with associated works. Despite being one and a half storey dwellings, the proposal would fundamentally erode the openness of the land as a matter of principle because there would be development delivered where there currently is none. This is despite the proposed integration of landscaping and open space which are limited in scope and would have a correspondingly limited effect on how the site's development is perceived.
32. As a result, the unspoilt nature of this part of the coastline would be lost and sea views would be interrupted. Moreover, it would impinge on views from Northam Burrows within the AONB where development would sprawl away from the settlement of Appledore and dilute the countryside fringe.

⁶ Which itself has special qualities including panoramic seascape and views of a landscape and seascape devoid of human influence as referenced by North Devon Coast AONB Partnership

⁷ APP/W1145/W/19/3224956

33. The site's location in close proximity to the cliff edge would mean there is a high degree of prominence, and the effect of the proposal would be marked. Consequently, the proposal would erode the special qualities associated with Landscape Character Type 5b of the JLCA and the positive contribution towards the undeveloped coast and the setting of the North Devon Coast AONB.
34. A Landscape and Visual Impact Assessment (LVIA) was submitted in support of the proposal. For all intents and purposes, the context within which the latest LVIA was conducted is the same as the LVIA considered under the previous appeal decision at the site.
35. For example, both were based on assessing residential development of fundamentally similar scale⁸ and the implications of development to the south east that was granted planning permission at appeal⁹.
36. In this context, the previous appeal decision at the site determined that the impact on the AONB would be moderate adverse on views from Northam Burrows and from the linkages between the open coastline within the AONB and the open and undeveloped coastline of the appeal site.
37. Based on my own findings, I concur with that assessment about the implications of developing the site and find that the impact of the proposal in this case would be greater than what the latest LVIA suggests.
38. Despite the appellant's contentions, it also follows from the above reasoning that the development to the south east is not a new material consideration in this case. Moreover, it would not mitigate the impact of the proposal through visual association.
39. Indeed, I consider that the development to the south east is physically separate due to intervening features. The site before me is materially of greater importance and value due to the fact it is immediately adjacent to the cliff edge and coastal path. Furthermore, I consider that it would not comprise an appropriate rounding off the settlement's existing pattern of development.
40. During my own site visit I noted that the development to the south east is now in the process of being built out. It was set a considerable distance from the coastline cliff edge and did not impinge on my views from the coastal path to any meaningful extent. Indeed, my views were dominated by site and undeveloped coastline.
41. I note the Council reference another appeal decision¹⁰ in the area, however this involved development of a different scale and it is not clear from the evidence presented that it shares sufficiently similar physical characteristics to the site in this case. Consequently, I have given it limited weight in my assessment.
42. Overall, the proposal would detract from the unspoilt character, appearance, and tranquillity of the undeveloped coast. Furthermore, it would not conserve the setting and special character and qualities of the North Devon Coast AONB.

⁸ The previous proposal was made in outline, but it is possible to determine that the fundamental scale and scope of impacts associated with two dwellings would be the same as the three dwellings in this case.

⁹ APP/W1145/W/17/3188135

¹⁰ APP/W1145/W/21/3283161

43. Consequently, it would not accord with Policies ST04, ST09(7), ST14(e), DM04, DM08A(2) and NOR(k) of the NDTLP and Paragraph 176 of the National Planning Policy Framework (the Framework).
44. Among other things, these policies reflect the statutory duties set out under Section 85 of the Countryside and Rights of Way Act 2000 requiring all relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of AONBs when performing their functions.
45. I note the position of the inspector under the previous appeal decision at the site where the AONB impacts were not found to be decisive on their own. However, I am mindful of statutory protections, policies within the development plan and the Framework for AONB's and that these need to be important factors in conducting the planning balance at the end of my decision.

Coastal Erosion

46. The site is located in close proximity to the existing coastline and cliff edge. Policy ST03(e) of the NDTLP is clear that development should be designed and constructed to take account of the impacts of climate change and minimise the risk to and vulnerability of people, land, infrastructure, and property by locating development to avoid risk from current and future coastal erosion. Policy ST03(e) of the NDTLP is amplified by the Shoreline Management Plan Review 2010 (SMP2).
47. The appellant submitted a slope stability assessment in support of the original application. However, I note from the Council's coastal engineer that linear rates do not reflect the episodic and unpredictable nature of erosion, and furthermore such rates should not be used in a localised manner.
48. I also note that the erosion rates¹¹ are based on generic hard rock cliffs, whereas the site sits atop a mixture of softer rock compositions. Consequently, based on the original slope stability assessment there remains significant uncertainty about the risk and extent of future coastal erosion. There is little confidence that erosion rates for softer rock compositions would not exceed the ranges of coastal erosion over the next 100 years as identified by the slope stability assessment.
49. The appellant asserts that Environment Agency estimates indicate the slope may erode between 3.4m and 6.6m over the next 100 years. However, it is not clear that the Environment Agency has made such estimates for this slope, and this statement would appear in relation to erosion rates associated with generic hard rock cliffs.
50. The appellant sought to amplify their position by submitting an updated slope stability assessment alongside a geotechnical ground investigation report with the appeal. The updated slope stability assessment appears to use the same assessment data as the original slope stability assessment and so the findings above remain relevant.

¹¹ Notwithstanding that they may be derived from the National Coastal Erosion Risk Mapping reports for the other areas in the Taw Torridge estuary.

51. Whilst the geotechnical ground investigation report includes new assessment data and more detail relating to storm events and sea level rise, it is clear from the Council's coastal engineer that wave mechanics during extreme storm events have not been factored into the assessment.
52. Furthermore, the response from the Environment Agency highlights that there is a level of uncertainty inherent in the appellant's technical assessments about potential erosion and instability. I also note from reading the geotechnical ground investigation report that many of the rock compositions are described as being weak or extremely weak. This casts further doubt about the applicability of the generic hard rock erosion rates originating from the slope stability assessment.
53. The level of uncertainty about coastal erosion in this case is consistent with the findings of the inspector under the previous appeal at the site. In the circumstances, a cautionary approach should be adopted that seeks to minimise the risk from future coastal erosion.
54. Altogether, whilst the methodology of the slope stability assessment and other evidence might be broadly in line with accepted approaches, I am left with significant uncertainty about the interaction between the softer rock compositions, many of which are classified as extremely weak, and wave mechanics during extreme storm events that may become more frequent with climate change. Consequently, I cannot be satisfied that the upper limits of the erosion rates identified by the appellant would not be exceeded or that the proposal would not be at serious risk of coastal erosion at its current distance from the cliff edge.
55. The Council's coastal engineer's assessment of aerial imagery and the area of coastline upon which the site is located suggests there is a greater risk of erosion compared to the protected land to the north. However, the appellant's counter assessment, including historical mapping, suggests the erosion rates are limited. Clearly, an analysis of aerial imagery and mapping is not conclusive, and this is accepted to a certain degree within the slope stability assessment. Consequently, these factors have not been determinative.
56. The SMP2 includes the site within Policy Unit 7c09 which recommends a hold the line approach to coastal management. This means maintain or change the level of protection provided by defences in their present location only. Therefore, new levels of protection would not be policy compliant. However, I note from the appellant's latest submissions that they are not relying on coastal management measures when trying to justify the proposal. Consequently, the proposal has been assessed on this basis.
57. The appellant references the Coastal Change Management Area (CCMA) technical report from 2021 but it is not clear that this is submitted in evidence, and I am unable to probe it further.
58. Overall, I consider that it has not been demonstrated that the proposal would be in an appropriate location in relation to coastal erosion and consequently it would not accord with Policies ST01, ST02 and ST03 of the NDTLP. Among other things, these policies set out that development should be designed and constructed to take account of the impacts of climate change and minimise the risk to and vulnerability of people, land, infrastructure, and property.

Taw Torridge Estuary SSSI

59. Natural England advise that the development site is adjacent to the Taw Torridge Estuary SSSI which is designated for features that include intertidal and overwintering bird habitats.
60. The Council's principal dispute relates to the effects of any necessary coastal erosion management measures. However, I note that the appellant has confirmed they are not relying on coastal erosion management measures to justify the proposal. Therefore, the proposal would not result in the net loss of intertidal habitat within the Taw Torridge Estuary SSSI.
61. Natural England advise mitigation would be required in relation to recreational disturbance impacts and noise and lighting impacts. However, it appears the mitigation sought by Natural England could potentially be secured by planning condition and this is not disputed by the Council.
62. Overall, the proposal does not propose to rely on coastal defences and therefore would not harm the features underpinning Taw Torridge Estuary SSSI's designation. Consequently, there would be no conflict with Policies DM08 and ST14 of the NDTLP or Paragraph 180(b) of the Framework.
63. Among other things, these policies are consistent with statutory duties set out under Section 28G of the Wildlife and Countryside Act 1981 and establish that development should conserve, protect and, where possible, enhance biodiversity and geodiversity interests and soils commensurate with their status and giving appropriate weight to their importance.

Planning Balance

64. Whilst the proposal would not conflict with the development plan in relation to the Taw Torridge Estuary SSSI, this would be a neutral matter and there would be conflict in relation to all of the other main issues including location, character and appearance including North Devon Coast AONB and coastal erosion. Consequently, the proposal would be in conflict with the development plan as a whole.
65. There is a shortfall in housing land supply, which is not disputed. Accordingly, whilst I have already considered the matter in relation to the main issue of location, the shortfall would trigger Paragraph 11(d) of the Framework because the policies most important for determination of the appeal in relation to housing supply are deemed to be out of date.
66. I accept additional housing would be a benefit weighing in favour of the proposal, especially in the context of a shortfall and I am also aware of other potential benefits argued by the appellant¹².
67. However, notwithstanding these potential benefits and the appellant's approach to Paragraph 11(d)(ii) and reference to other appeals¹³ in this context, the application of policies in the Framework in relation to the North Devon Coast AONB would represent a clear reason for refusing the development proposed in accordance with Paragraph 11(d)(i) of the Framework and Footnote 7 therein.

¹² Including possible landscape and biodiversity enhancements, and coastal path improvements, among others.

¹³ APP/D0840/A/13/2209757 and APP/A0665/A/14/2226994

68. Whilst the Council has not explicitly engaged Paragraph 11(d)(i) and Footnote 7 implications, it is implicit in their conclusions on the matter of the North Devon Coast AONB that such policies would be engaged in the planning balance.
69. As a result of this assessment, it is not necessary to consider Paragraph 11(d)(ii) of the Framework or the tilted balance, and the presumption in favour of sustainable development does not apply in this case.
70. Overall, the proposal would conflict with the development plan as a whole and there are no material considerations indicating that a decision should be taken otherwise than in accordance with it.
71. Indeed, the application of policies in the Framework pursuant to Paragraph 11(d)(i) reinforces the finding of conflict with the development plan and that planning permission should not be granted.

Other Matters

72. It is not necessary to make a finding on the UU because it is not in dispute and seeks to secure mitigation, which is a neutral matter, and would not make any difference to the consideration of the main issues, planning balance or outcome of the appeal.
73. I acknowledge the appellant's evidence in relation to a Facebook post about the proposal. However, any social media interest in the dwellings is not determinative under the appeal.
74. The appellant deals with access and parking, and drainage matters, among other things in their statement of case. However, these are neutral matters not disputed by the Council and therefore have not informed the main issues under the appeal.

Conclusion

75. For the reasons given, the appeal is dismissed and planning permission refused.

Liam Page

INSPECTOR