



Appeal Decision

Site visit made on 28 March 2023

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Appeal Ref: APP/W1145/W/22/3297057

Land to east of School Lane Farm, Chilsworthy, Holsworthy, EX22 7BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Barton Farm Homes Ltd against the decision of Torridge District Council.
 - The application Ref 1/0665/2021/OUT, dated 5 June 2021, was refused by notice dated 15 February 2022.
 - The development proposed is residential for 5 dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by the Council and Barton Farm Homes Ltd. These applications are the subject of separate decisions.

Preliminary Matters

3. The application was made in outline form with all matters reserved apart from access. As part of the application the appellant submitted a site plan to indicate how the site could be laid out for five dwellings. This plan is marked as for illustrative purposes, and I shall treat it as such.
4. At the time that the Council issued its decision it was unable to demonstrate a five year supply of housing. During the course of the appeal the Council issued a new five year housing land supply statement confirming that it is now able to demonstrate a supply of 5.9 years. The appeal needs to be determined in accordance with the current situation. The appellant was given opportunity to comment on this, including the Council's position that the appeal site is in a countryside location where open market residential development is not supported. No additional substantive comments on this matter were received.

Main Issues

5. Whether the site would be suitably located for the proposal with regard to:
 - a) local Development Plan Policies that set out the Council's spatial strategy and,
 - b) its proximity to School Lane Farm, in terms of the effect of farming activities on the living conditions of the future occupiers of the dwellings, and the effect of their proximity on the future viability of the farm.

Reasons

Development Plan

6. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP) defines Chilsworthy as a village, and Policy HOH sets out the Council's spatial strategy for the village. However, the appeal site is outside its development boundary. It is thus in an area where residential development is only supported by the LP on an exceptional basis, 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. The proposal is for open market housing and would not therefore meet any of these exceptions.
7. It is suggested that the site is not within the open countryside. The proposal would occupy part of an agricultural field that is alongside but not integral to the developed area of the settlement. Development at the site would extend built form towards the nearby farm, however this is currently a detached farmstead that sits outside the settlement, and in any case the proposal would not fill the gap between the two entirely. Therefore, although the site adjoins the settlement, it is part of the open and undeveloped countryside that surrounds the village.
8. It is also suggested that the proposal should be considered to constitute the 'rounding off' of the existing settlement. To the east the site borders an existing dwelling in part, and the undeveloped area of a site that has outline permission for five dwellings. Development at the site would therefore directly adjoin the settlement along its eastern side, on the basis that the adjacent scheme comes forward. To the west an area of open agricultural land would be retained, and the site would border undeveloped land to the north. Along its southern boundary it could be said to adjoin the area occupied by the existing village hall. However, the appeal site is separated from this area by mature hedges either side of School Lane. I am not therefore satisfied that it should be considered a case of rounding off, and in any case no exceptions for such situations are provided for in the LP.
9. In summary, development at the site would not accord with Policies ST06, ST07 or HOH of the LP, which together set out the Council's spatial strategy that aims to locate development in areas which are well located to other uses, serviced by a choice of transport modes and accessible to the communities they serve.

Living conditions and farm viability

10. The appeal site is to the east of School Lane Farm, which is a working agricultural enterprise with buildings used for housing livestock and includes a silage pit and dung yard. The appeal site would be separated from the closest farm buildings by a retained strip of agricultural land providing a gap between the farm and the closest proposed rear garden of approximately 30 metres.
11. The appellant accepts that there would be an impact on the future occupants of the proposed dwellings primarily from odour associated with the farm. The severity of that impact is the matter of dispute between the appellant and the Council.
12. Weather data shows a prevailing westerly wind direction, which would carry odours from the farm to the site. There are several variables that would affect

the impact of odour on future residents. Stronger winds would disperse odour more quickly, and rain can reduce the transmission of odours. It is therefore the case that even if livestock was housed permanently at the farm odours would not be discernible at the site all the time.

13. However, when odour generated by housed livestock, and in particular cattle, is noticeable at the appeal site there can be no doubt that the experience of such odour, would be unpleasant for future occupants of the proposed dwellings. The submitted odour report accepts this and refers to the odour as moderately unpleasant with the potential for a high level of annoyance.
14. The appellant places great weight on the findings of the sniff tests. I accept that this is a recognised method of analysing an odour issue, yet these only represent a snapshot in time, and only one of the tests was carried out at a time when cattle were likely to have been housed at the farm. Despite this, the report summarises the overall impact based on the average of all four test periods. Additionally, I note that light intermittent drizzle was reported during the November test when cattle might have been present, which may have lessened any discernible odour at the site.
15. The appellant has made several assumptions about the operations that are carried out at the farm, and some of these are incorrect. Reference is made to the overwintering of cattle; however, the odour report does not demonstrate an understanding of the farm business, how buildings are routinely used, what activities are carried out throughout a typical year that might generate a problematic odour, and how often they are carried out. For these reasons I am not satisfied that the odour report demonstrates the necessary understanding of the farm business, and as such an overall understanding of the site's context and the potential conflict between this existing use and the proposal is not before me.
16. Without this, and based on the information that I do have, including that provided by those who run School Lane Farm, I must conclude that problematic operations at the farm are not necessarily limited to the short term housing of cattle during the winter. Odours generated by the farm would be likely to cause a nuisance to the future occupiers of the proposed dwellings and would thus not secure adequate living conditions. It is evident that this would not be continuous; however, when encountered it would be unpleasant and highly annoying for future occupiers of the proposed dwellings.
17. I also give weight to the nuisance from noise and flies. This would be mainly encountered when cattle are housed at the site. Noise would be likely to be a particular issue when cattle are being fed, and during times such as calving and weaning.
18. In terms of the effect of the proposal on the farm enterprise, for the same reasons it would be likely that complaints would arise from the future occupants of the dwellings in relation to odour and noise from the farm. This could restrict the owner's ability to operate their business in a viable and sustainable manner.
19. The appellant compares the situation with that at nearby Beechworthy Farm where the closest dwelling is 55 metres from the farm. This dwelling is however on the opposite side of the farm and therefore not downwind from the

prevailing wind direction. It therefore has no bearing on my assessment of the appeal proposal.

20. The appellant suggests that occupiers of dwellings in rural areas are familiar with and less sensitive to agricultural odours, and that various odour generating activities take place on the agricultural land surrounding the village. I accept that the latter may be the case in general terms, and would usually not be an issue; however, the appeal proposal relates to a specific situation whereby new dwellings would be erected close to and downwind of a working farm. Additionally, there can be no expectation that future occupiers of the dwellings have previously lived in a rural area or close to a working farm. I therefore give this matter little weight.
21. I note that the Council did not request an odour assessment for the adjacent site. This site is further from the farm and a similar distance to existing dwellings to the south, whereas the proposal would bring the residential spread of the village closer to the farm.
22. Reference is made to the footpath adjacent to the farm and the suggested nuisance from farm odours to those using the path. I note that the submitted odour report suggests that a footpath is of low receptor sensitivity, whereas housing is classified as high. The nature of the transient and occasional use of a footpath is very different to the permanent occupation of a dwelling, and thus I am of the view that this should have no bearing on my decision.
23. It is suggested that a condition could be imposed if the appeal is allowed to secure things such as mechanical ventilation for the dwellings and tree planting in the intermediate area to buffer the odour impacts, to mitigate the impacts of the farm on the proposed dwellings. Such matters were not considered as part of the odour assessment or by an odour specialist, so it is unclear the extent to which they would mitigate the identified issue. In terms of mechanical ventilation, to be effective future occupiers would need to keep windows and doors closed, which in itself does not create a pleasant living environment, and such measures would do nothing to address odour impacts on the proposed garden areas. I am therefore of the view that the use of such a condition would not be sufficient to make the development acceptable.
24. In summary, the proximity of the site to School Lane Farm would not ensure adequate living conditions for future occupiers of the dwellings, and as a result would create conflict between the proposed and existing land uses, which would be likely to have an adverse impact on the ongoing viability of the farming enterprise. It would be contrary to Policies DM01 and ST11 of the LP, and Paragraphs 81, 84, 130 and 187 of the National Planning Policy Framework. Together these seek to ensure that the intended occupants of the proposed development would not be harmed as a result of existing uses, that proposals support employment growth, create the conditions in which businesses can invest, expand and adapt, integrate effectively with existing businesses, and create places with a high standard of amenity for future users.

Other Matters

25. The proposal would deliver five new dwellings, which would contribute to local housing land supply; however the weight I give to this is limited by the Council's revised housing land supply position and the small number of dwellings that it would deliver.

26. I give some weight to the relatively short distance between the site and the larger settlement of Holsworthy. However, this is limited by a reliance on the private car for such journeys and its failure to accord with the Council's overall aim to locate new development in areas with a choice of transport modes.
27. It is suggested that the proposal would support the retention of the services and facilities within the village. There is nothing before me to suggest that these existing services and facilities are at risk, so this is also a matter to which I give little weight.
28. There would be some economic benefits from the construction process and as future occupiers of the proposed dwellings make use of local services and facilities. This weighs in favour of the proposal, but the weight I give to it is limited by the small scale of the proposal.
29. The appellant refers to an appeal decision at Woodacott, Thornbury. The details are provided in extract form only, and it is not clear what circumstances surround the case. I therefore give this matter little weight.
30. In combination, the matters that weigh in favour of the proposal are limited and are not sufficient to outweigh my findings on the main issues of the appeal.

Conclusion

31. The proposal would conflict with the development plan and there are no other considerations that outweigh that conflict. Therefore, the appeal should be dismissed.

A Tucker

INSPECTOR