



Appeal Decision

Site visit made on 10 November 2023

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/P1133/W/23/3315694

Obelisk Gardens, Road Past Mamhead Grange, Mamhead, Devon EX6 8HG

- 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 Mrs Diane Nyiry against the decision of Teignbridge District Council.
 - The application Ref 21/01352/MAJ, dated 4 June 2021, was refused by notice dated 19 December 2022.
 - The development proposed is Change of use of land for the siting of 14 holiday lodges and the demolition of glasshouses, the retention of one glasshouse for use as a winter garden, alterations to the access arrangements at the application site, construction of internal roads, parking spaces, hard standings, deckings and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The scheme was amended during the determination period, reducing the number of proposed lodges from 24 lodges to 14. Although some of the supporting reports have not been amended, I have based my reasoning on a proposal for 14 lodges, as set out in the description above.
3. Having reviewed the evidence I concluded that the effect of the development on biodiversity and protected species should be considered as a main issue. The main parties were given an opportunity to comment on this during the appeal and as such would not be prejudiced in this regard.

Main Issues

4. The main issues are;
 - Whether the development would accord with local policies with regard to accessibility and sustainable transport choices; and,
 - The effect of the development on biodiversity and protected species.

Reasons

Location

5. Policy S1 of the Local Plan (LP) sets out that proposals will be required to perform well against a series of criteria. These include accessibility by walking, cycling and public transport for main travel purposes, road safety and congestion and access to necessary services, amongst other considerations. LP Policy S9 reinforces LP Policy S1 by requiring development to promote public transport, cycling and walking, again, amongst other considerations.

6. I have no doubt that the relatively remote location and immediate access to open countryside would be attractive for potential tourists. The site is a few miles from the dualled A380 which links Exeter and Torquay, and there are supermarkets and other amenities at Marsh Barton and Alphington, accessed a few miles along this road towards Exeter. However, although the lanes between the site and the A380 are reasonably wide and flat, once past the large car park to the sensory garden the road becomes far steeper and narrower. Given the distances and the configuration of the road network, it seems highly unlikely that many visitors would walk or cycle to shops and other amenities in Marsh Barton and Alphington to the north.
7. To the south and east the site is linked to the coastal settlements, but again the distances and the configuration of the road network, which mainly comprises narrow lanes with some steep inclines, makes it unlikely that most visitors would walk or cycle to those amenities. Moreover, there are no public transport options.
8. I acknowledge that some visitors might include walking and cycling as recreational activities. The argument is also advanced that future tourists would be likely to bring their shopping with them, which would limit their need to use their cars. However, it is also stated that future tourists would be retired and sedentary. Notwithstanding the inconsistency in this regard, the appellant is ascribing behaviours that can be neither validated nor enforced, as well as anticipating age and activity profiles that are similarly unsubstantiated. Consequently, I give these arguments very little weight in my reasoning and conclude that future visitors would be likely to use private transport for buying food, accessing other services and finding entertainment in periods of bad weather.
9. It is suggested that one of the greenhouses could be upgraded to provide a winter garden to encourage visitors to stay on site, but no further details are provided. As such, I give this little weight.
10. A traffic survey was undertaken but it appears that this was undertaken during the COVID lockdown when traffic volumes were reduced, and also outside the peak holiday period. The transport survey also provides information with regard to traffic generation using TRICS¹ data. Whilst I have no reason to disagree with the projection based on the TRICS data, I note that the base data is derived from caravan and camping sites with considerably more units on the site than would be the case here. Those sites often have on-site shops and other amenities which reduce the need to go elsewhere. As such, it is unclear whether this base data is directly comparable to this appeal and consequently, carries limited weight. In any case, whilst I appreciate that some of the harm arising from an increased use of private cars is linked to traffic volumes, the Council's objection is concerned mainly with distance from services and accessibility. I see no reason to disagree.
11. The appellant has committed to a travel plan should the appeal be allowed but whilst these can advise visitors, they do not necessarily alter behaviour. In any case, the shops and services would remain the same distance from the site. I acknowledge that the National Planning Policy Framework (the Framework) includes low and ultra-low emission vehicles amongst its sustainable transport

¹ Trip Rate Information Computer System

modes, but it cannot be guaranteed that future visitors would have these vehicles, even if there were charging facilities on site.

12. In the light of the above, I conclude that visitors would need to travel some distance to access essential services, and would therefore be dependent on private vehicles for much of their day-to-day holiday activity, whether this involves accessing local trails, the coast or other attractions or services. The development would therefore fail to meet the criteria set out in the aforementioned LP Policies S1 and S9 with regard to performance against the criteria of accessibility and sustainable transport choices.
13. My conclusion in this regard is reinforced by Paragraphs 85, 105 and 110 of the Framework, which taken together set out that development should be directed to those locations where travel can be limited and where appropriate opportunities exist to promote sustainable transport choices, amongst other considerations. The appellant does not dispute that there would be policy conflict in this regard, and I see no reason to disagree that this policy conflict should be afforded moderate weight.

Protected species

14. The south facing and sloping site abuts the Grade II* Mamhead Park, a Registered Park and Garden, on its northern boundary. The boundaries, and the western half of the appeal site, contain a variety of largely mature ornamental and forest trees, growing amongst a mosaic of neutral grassland, amenity grassland and scrub. The Arboricultural Impact Assessment² (AIA) indicates that most specimens and groups fall within categories A and B as defined in BS5837:2012. These are categories for high and moderate quality trees.
15. The ecological appraisal³ concluded that there is medium potential for bats and reptiles on the basis that the site's habitats and features are capable of supporting those species, and that the site is located within areas of known distribution. That conditions are suitable for commuting and foraging bats is confirmed by the subsequent bat activity surveys⁴. The appraisal also notes that occasional features would be suitable for bat roosting, albeit for small numbers of individuals. It is also likely that there are slow worms and adders around the scrub and grassland features.

Bats

16. The introduction of lighting onto a site can cause the fragmentation of bat commuting and foraging routes, and the abandonment of established roosts. It is notable from the heatmap that bat activity is associated with tree cover, which is found on the northern and western site boundaries and in the western portion of the site. This is where the plans show that most of the lodges will be located. There is a particular hotspot which located in the region of the proposed sites for lodges 3, 4 and 9 which appears to be associated with some of the largest trees identified in the survey.
17. The appellant's evidence concludes that tree cover on the site will remain largely unaffected by the development, and the bat survey states that it is

² Doug Pratt, May 2021

³ Quantock Ecology, June 2021

⁴ Quantock Ecology, September 2021

understood that the boundaries and trees lines will remain unaffected. However, some sections of access tracks would run beneath established trees, and some of the lodges would be oversailed by tree canopies. From my observations on site and the height of canopy clearances given in the AIA for specific trees, I conclude that significant pruning would be required to facilitate vehicular access around the site as well as to avoid direct conflict with some of the lodges. In addition, about half of the lodges would be located on ground with a pronounced slope, with floor levels some 2-3 metres above ambient ground levels at one end in some instances. This would exacerbate the conflict with existing trees and would be highly likely to require significant canopy pruning.

18. I also have concerns that the transport delivering the lodges would require further tree pruning works to facilitate access and placement. It is also unclear how root protection zones could be protected during those installation operations.
19. Moreover, the tree survey shows shade arcs, but given their size, it appears these are shade arcs for a particular day and time in high summer. The shading from the site trees even in late spring and early autumn would be significantly greater than is shown. I appreciate that on a hot day shade might be welcomed, but the evidence advanced in relation to occupancy suggests that it is anticipated that there would be occupancy for a far longer season. As such, it seems very likely that there would be pressure for additional pruning works to allow light and sunlight to penetrate the tree cover.
20. I conclude that there would be significantly more work to trees than is anticipated in the appellant's evidence. As the bat foraging and commuting routes appear to have a direct association with the distribution of trees on the site, disturbance to tree canopies would be highly likely to lead to an adverse effect on foraging and commuting for local bat populations.
21. One of the proposed conditions requires a lighting plan to be approved by the Council in the event that the appeal is allowed. However, it is difficult to see how boundaries and the central tree line could be kept as 'dark corridors' as recommended in the bat activity survey report. Whilst I appreciate that light spill and the use of specific light wavelengths can be controlled by condition, it is difficult to see how vehicle headlamps, and light overspill from lodges, could be controlled sufficiently to retain those dark corridors. The bat activity survey report notes that the lodges should be positioned in such a way as to minimise the windows facing woodland or tree features. However, some lodges are shown on the proposed layout to be entirely within areas of high bat activity. I am unable to conclude that the use of conditions could be controlled sufficiently to provide adequate mitigation, particularly for those bat species that are particularly light sensitive, and which are known to frequent the site.
22. Moreover, it appears that the eastern portion of the site, which would be lodge-free under the amended proposals, is deemed to be more sensitive given the adjoining Mamhead Park. Consequently, given the sloping site and the existing tree cover, it is difficult to see where else the lodges could be located to have less conflict with established bat activity.
23. Another condition requires further surveys to check for bat roosts, including a climbing survey. However, the standing advice from Natural England with regard to protected species states that developers should submit enough

information for local planning authorities to fully consider the effect of the development on protected species and their habitats. Circular 06/2005⁵ states that *it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*. It further advises that additional surveys should only be required by condition in exceptional circumstances. Consequently, undertaking surveys after planning permission has been granted is unlikely to be an acceptable or appropriate course of action. The potential of features for bat roosts was identified in the ecological appraisal and I see no reason why climbing surveys could not have been undertaken at an earlier stage.

24. The likely reduction in the established tree cover, alongside the potential for light pollution in areas that should be kept as dark corridors, and the lack of clarity concerning bat roosts, leads me to conclude that the impact of the development on local bat populations has yet to be established. Furthermore, I am not satisfied that the proposed conditions would necessarily mitigate the development's impact on bats.

Reptiles

25. The ecological appraisal anticipates that no further surveys are needed as long as the majority of rough grassland habitats outside of the lodge/track footprints are retained or enhanced to similar long swarded habitat.
26. The proposed layout shows access tracks and paths, but these are seemingly imposed upon the underlying topography and in many instances would be steeper than generally considered appropriate for regular vehicular or pedestrian access, particularly where surfaces are unbound, as would be the case here. This leads me to question whether this layout would be achievable.
27. Moreover, although the plan shows parking bays by each lodge, there is no indication of turning space for those parked vehicles, or passing places along the access roads. It seems that vehicles would either turn on the grassed areas adjacent to the lodges and parking bays, even though these areas would in some instances have a pronounced slope, or that the surfaced areas would need to be extended. It seems unlikely that the current sward could tolerate repeated vehicle movements, and that as a consequence the surfaced areas would need to be extended. It also seems likely that additional groundworks would be needed to accommodate the concrete bases for the lodges sited on sloping ground.
28. The plans do not appear to fully reflect the earthworks required to position the lodges and to accommodate the necessary infrastructure, and consequently the existing ground conditions and established ground flora would either be reduced in extent, or degraded, or both. This would have a detrimental impact on the range and habitat of other protected species likely to be on the site, notably reptiles.
29. The officer's report states that the development will have low impact, that there are very little ground works proposed and that the majority of vegetation would be retained. However, what is shown on the plans takes very little

⁵ ODPM, August 2005

account of the practicalities of implementation and as such understates the development's full impact. Consequently, I have concluded that the damage to ground conditions, trees and ground flora has not been adequately assessed. It seems very likely that the short and long term impact of the development on the underlying biodiversity of the site would be far greater than acknowledged.

30. As such, I give little weight to the suggestion that the underlying habitat would be retained or enhanced, and I am unable to conclude that the proposed conditions would make the development acceptable. In any case, the extent of the development and an intensification of use across the site would create noise and disturbance, which would itself discourage recolonisation by protected species.
31. There would be an adverse impact on biodiversity and protected species. This would be contrary to Paragraph 174 of the Framework which sets out to safeguard the natural environment and Paragraph 179 which is concerned with the protection of priority species. There would also be conflict with LP Policy EN12 which requires development to contribute to the protection and enhancement of woodlands, trees and hedgerows, and LP Policy EN8 which is concerned with biodiversity, and its protection and enhancement.

Other considerations

32. The projection of likely occupancy suggests that the development could bring around £400,000 to the local economy annually. There is a lack of clarity around these figures but in principle I see no reason to disagree that the development could make a significant contribution to the local economy.
33. Information regarding likely employment sets out that there would be part-time employment for local people but there is no evidence that employment would come from local villages or that there is local demand for part-time jobs in hospitality.
34. Moreover, although figures are given for likely employment associated with each changeover, it is unclear to me how often it is anticipated changeovers would occur. If changeover occurs only weekly, although there would be part-time employment every week, this would have a minor beneficial impact only on local employment opportunities.

Planning obligation

35. The site is within the Exe Estuary SPA/Ramsar Site mitigation zone, and in this regard the Council requires a financial contribution to mitigation in-combination recreational impacts. I have a completed Unilateral Undertaking before me which sets out that the relevant contribution would be made. However, as I have found harm in relation to the main issues it is not necessary for me to consider this further.

Other matters

36. The site abuts a registered park and garden. However, Historic England withdrew its objection to the proposals when the scheme was amended and on the basis of what is before me, I see no reason to disagree.
37. It is unclear to me how the site's planning history supports the appellant's case. Interested parties have suggested that the greenhouses were used for

wholesale cut flowers rather than the garden centre and restaurant suggested in the appellant's evidence. Moreover, I did not observe anything at my visit, not least the limited areas available for parking, that led me to conclude that the site was formerly used as a garden centre or restaurant with regular public access of the magnitude suggested.

38. Whilst I appreciate that the site's former uses could recommence, this does not alter my reasoning with regard to the distances needing to be travelled by future visitors for day to day services. In any case the appeal is determined on the basis of the current planning policy context and whether opportunities exist to make the site more sustainable in terms of transport. I have concluded that those opportunities do not exist to any more than a very minor degree.
39. As the current holiday lets are lawful only as a consequence of the passage of time rather than through the securing of planning permission, the existing holiday accommodation does not necessarily set a precedent.
40. It is suggested that an increase in holiday accommodation in the area might offset the conversion of permanent homes. However, this argument is unsubstantiated and carries no weight in my reasoning.
41. Other permissions have been brought to my attention. However, the developments at Dornefield Farm and Moorland Heights are concerned with extensions to established sites and are closer to amenities than would be the case here. The permission at Haldon Forest used existing buildings and is also the Forestry Commission's base for its operations. The Council accepts that there would probably be policy conflict if the Haldon Forest application was submitted now. These applications are not comparable to what is before me.
42. I acknowledge that measures could be introduced to install solar panels and charging points, but these do not outweigh the harm identified above.
43. The absence of objection from the highway authority on highway safety grounds does not alter my reasoning with regard to distance from amenities and likely travel choices.
44. I appreciate that the application was recommended for approval, on the grounds that the policy conflict was outweighed by economic benefit. However, Members took a different view, as they are entitled to do.

Planning Balance and Conclusion

45. The appeal statement argues that the development would be in accordance with the development plan as a whole. However, although sustainable tourism is supported by LP Policies S12, S22 and EC11, LP Policies S12 and S22 are qualified by requirements to support biodiversity, nature conservation assets and the environment, amongst other criteria. LP Policy EC11 allows the expansion of existing tourist accommodation, but in principle only.
46. I also acknowledge that LP Policy S1 requires development to perform well against a number of listed criteria. However, compliance with other criteria does not outweigh the harm arising from the development with regard to criteria a) and c) as cited in the Council's decision. Moreover, I have found harm in relation to LP Policy S1 h) which is concerned with biodiversity. The appellant has directed me to LP Policy S2 which is concerned with high quality design, but this is also qualified by a development's impact on the natural

environment and how it responds to the characteristics of its site. I have found harm in this regard.

47. The Framework supports economic development in rural areas, and accepts that such locations are less accessible by sustainable choices. Nonetheless, for this appeal the distances involved, together with the morphology of the local road network and the extent of the development, lead me to conclude that the economic benefits would not outweigh the harm arising from location. In any case, section 15 of the Framework is also concerned with conserving and enhancing the natural environment, habitats and biodiversity.
48. Moreover, the starting point for the decision maker is the local development plan. Although the policies cited in the Council's decision predate the Framework, they are broadly consistent with the Framework and therefore, carry full weight in my reasoning.
49. Consequently, I conclude that the development would not comply with the development plan taken as a whole, or with national guidance, and there are no material considerations of such weight to lead me to conclude otherwise.
50. The appeal is dismissed.

A Edgington

INSPECTOR