



Appeal Decision

Site visit made on 21 September 2023

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal Ref: APP/Y1138/W/23/3318248

Holme Field, Silver Street, Kentisbeare, Devon EX15 2BW

- 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 Milton Property Developments Ltd against the decision of Mid Devon District Council.
 - The application Ref 22/00822/FULL, dated 15 April 2022, was refused by notice dated 12 October 2022.
 - The development proposed is the erection of two dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two dwellings at Holme Field, Silver Street, Kentisbeare, Devon EX15 2BW in accordance with the terms of the application, Ref 22/00822/FULL, dated 15 April 2022, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Prior to the determination of the application the proposal was revised from three dwellings to two. As such I have used the description of development given on the decision notice and appeal form in the banner heading above.
3. The named individual at Milton Property Developments Ltd differs between the application form and the appeal form. Therefore, I have utilised the company name in the banner heading above.

Main Issue

4. The main issue is whether the site is in a suitable location for the development having regard to local and national policies.

Reasons

5. The appeal site is a parcel of land located to the rear of two recently completed dwellings. It is accessed via a drive between the dwellings which leads off Silver Street, the main road through the village.
6. The Council contend that the proposal is contrary to Policy S14 of the Mid Devon Local Plan 2013 – 2033 (Adopted July 2020) (LP) because it is outside of the settlement limits of Kentisbeare. Part of the appeal site is within the settlement limit as defined by Policy S13 of the LP, however the proposed dwellings would be outside of it. Therefore, insofar as the proposal would result in the provision of two dwellings outside of the settlement limits, the proposal is in conflict with Policy S14 of the LP.

7. However, the northern part of the appeal site is adjoined on three sides by residential properties and their gardens and to the north by a thick tree belt, beyond which is further woodland and open countryside. As such the site has a strong visual connection with the built form of the village and is clearly separated from the adjoining countryside to the north. The rear elevation of the northernmost of the proposed properties would not project beyond the rear building line of adjacent buildings. The Council acknowledge that the existing trees and buildings screen the site and that the proposed dwellings would sit comfortably on the plot, and I see no reason to disagree.
8. Therefore, the proposed dwellings would not appear as an intrusion into the countryside and would not result in harm to its character or appearance. In this respect the proposal would not conflict with Policy S14.
9. Because of the close physical connection with the village the site is not isolated as per the Braintree case¹ (as opposed to the definition of 'isolated' in policy S14) and as such the proposal would not be in conflict with Paragraph 80 of the Framework.
10. The appeal site is within walking distance of a number of facilities and services within the village including a church, post office and village shop, pub and school. Consequently, future residents would be able to meet the majority of their daily needs without utilising a private car. The use of such facilities and services by the future occupiers of the proposed dwellings would contribute in a small way to their viability and the vitality of the village.
11. Therefore, in these respects the proposal is consistent with the aims of Policy S1 of the LP which include, promoting sustainable travel by reducing the need to travel by car and delivering a wide choice of homes. It would also be consistent with paragraph 79 of the Framework where it states that to promote sustainable development in rural areas, housing should be located where it would enhance or maintain the vitality of rural communities.
12. The Council consider the proposal to be acceptable with respect to the effect on the character and appearance of the area, living conditions of occupiers of neighbouring properties, ecology and biodiversity, flood risk/drainage and highway safety. I see no reason to conclude differently on these matters. In these respects, the proposal is in compliance with Policies DM1, DM3, and DM5 of the LP.
13. Overall, part of the appeal site would be located outside of any settlement limit and is in partial conflict with Policy S14 of the LP. However, the accessibility of the site to services and facilities, its visual containment and relationship with other development and its appropriate scale and design means that the proposal would not significantly undermine the aims of the spatial strategy of the LP set out across Policies S1, S13 and S14 in terms of supporting sustainable patterns of development, locating development where it would reduce the need to travel and the protection of the countryside. Therefore, I conclude that the site is in a suitable location for the development having regard to local and national policies.

¹ Braintree DC v SSLG, Greyread Ltd & Granville Developments Ltd [2018]EWCA Civ 610

Other Matters

14. The Council has drawn my attention to a number of appeals where Inspectors have dismissed appeals for proposals outside of settlement boundaries in Mid Devon.
15. The 'Haven Lea' appeal² relates to a new dwelling some 1.2km from the nearest settlement with no footways leading to the nearest village. The Inspector found conflict with the aim to locate housing in a manner that minimises the need to travel by private vehicle and maintain the character of the countryside. As set out above the appeal site adjoins the settlement limits and would not conflict with the identified aims.
16. The 'Loranne' appeal³ relates to a new dwelling some 485m outside of a settlement limit. The Inspector considered the site to be physically separate from the village and isolated in terms of the Framework. This is not the case with the appeal scheme.
17. The 'Land between Glenthorne and Higher Shippon' appeal⁴ is adjacent to a defined settlement limit, in common with the appeal scheme. However, the Inspector describes the site as 'largely open' in contrast with the appeal site which has a high degree of visual containment.
18. I have taken these decisions into account in coming to my decision however, I do not consider that they relate to similar circumstances as the appeal scheme.
19. I understand the concern expressed within representations that to allow the appeal might set a precedent for similar developments. However, the Council would retain the right to assess such applications on their individual merits having regard to the specific circumstances of the site and the details of any proposed scheme.
20. Third Party concerns have been raised in relation to felling of trees and other works which may have occurred at the site. There are also queries over the accuracy of the boundaries shown on the plans. However, these are not matters which are before me. I acknowledge the concerns about parking and access both during and after construction however no objections have been raised by the Highway Authority in this regard and I have no substantive evidence which would lead me to come to a contrary conclusion. Similarly, there is no substantive evidence that the proposal would lead to unacceptable flood risk or drainage problems on the site or elsewhere.
21. Third parties have also raised concerns in relation to the design of the proposed dwellings however, the modern design would be appropriate in the context of the mixed development types in the locality. Because of the separation between the buildings, and the careful placement of windows on the proposed dwellings the proposal would not have a harmful effect on the living conditions of neighbouring properties by way of loss of privacy, overshadowing noise or pollution. The proposal does not include affordable housing, however this is not a requirement of local plan policy for schemes of this size. The landscaping scheme is appropriate for the site and can be secured by an appropriately worded condition. I acknowledge the concerns about wildlife in the locality, but

² APP/Y1138/W/21/3286300

³ APP/Y1138/W/21/3283610

⁴ APP/Y1138/W/21/3282638

an appropriately worded condition can ensure that the recommendations of the ecological survey are implemented.

Planning Balance

22. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications should be made in accordance with the development plan unless material considerations indicate otherwise.
23. The Council confirms that it can demonstrate a 5-year housing land supply and this matter is not disputed by the appellant. Nevertheless, Paragraph 60 of the Framework seeks to significantly boost the supply of homes and there would be a small benefit associated with the contribution to the supply of housing. There would also be some small social and economic benefits arising from the erection of two dwellings.
24. Further, whilst the proposal would conflict with Policy S14 as described above, I have concluded that the proposal would not significantly undermine the aims of the spatial strategy set out in Policies S1, S13 and S14 and would also accord with Policies DM1, DM3 and DM5 of the LP.
25. Taking all these matters together, I conclude that the proposal would comply with the development plan as a whole and there are no material considerations that indicate that the decision should be taken other than in accordance with it.

Conditions

26. I have undertaken some minor editing and rationalisation of the conditions proposed by the Council in the interests of precision and clarity. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, except in relation to plot 1 which was removed from the proposal prior to the determination of the application but is still indicated on some of the plans. This is in the interest of certainty.
27. Conditions (3) and (6) require details of materials and the implementation of the proposed landscaping. These are necessary to ensure that an acceptable appearance is achieved and to integrate the development into the surrounding area. Conditions (4) and (5) are necessary to ensure that protected species are not harmed.
28. I note the request from the Environmental Health Officer that a Construction Management Plan be imposed on any approval due to the restricted access and close proximity to residents. However other legislation exists which relates to access rights and nuisance, therefore given the small scale of the development I do not consider such a condition to be necessary.

Conclusion

29. For the reasons given above having had regard to the development plan as a whole, the Framework and all other matters raised, I conclude that the appeal should be allowed.

E Pickernell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A2.05, A.06A, A.07B, A.08A, A.09, and A.12, except in respect of the provision of Plot 1 as indicated on drawings A2.05 and A.09.
- 3) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 4) The development hereby permitted shall be implemented strictly in accordance with the recommendations and requirements of the Preliminary Ecological Appraisal undertaken by Western Ecology dated September 2022.
- 5) No external lighting shall be installed on the dwellings or elsewhere on the site, unless in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. Once installed the lighting shall be maintained as approved thereafter.
- 6) No development above ground shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.