



Appeal Decision

Site visit made on 4 December 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Ref: APP/K1128/W/23/3321663

Land at SX 675 511, Trehele Cross, Modbury, Kingsbridge, Devon PL21 0SU

- 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 Matt Taylor against the decision of South Hams District Council.
 - The application Ref 3479/22/FUL, dated 27 September 2022, was refused by notice dated 1 December 2022.
 - The development proposed is provision of poultry building and associated infrastructure (including private way).
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Decision

1. I decline to determine the appeal or to proceed with its determination.

Procedural Matters

2. Interested parties raised concerns over validity in relation to the original application, and then again at appeal. This was on grounds that the red line boundary on the submitted plans omitted some of the land required to carry out the proposed development. It was also notwithstanding a modification made to the red line boundary after the application was submitted. The matter was briefly acknowledged within the officer report, but neither party has given it any further consideration.
3. An invalid planning application cannot be the foundation for any jurisdiction in an appeal. This is the case regardless of whether the Local Planning Authority has itself validated and determined an application which is then the subject of an appeal. I am therefore required to give the matter further consideration.
4. The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) sets out statutory requirements concerning applications for planning permission. Amongst other things, these include a plan which identifies the land to which the application relates.
5. The Planning Practice Guidance further indicates that to make a valid application for planning permission, compliance with national information requirements is necessary. These set out a minimum requirement for a location plan, in relation to which the application site should be edged clearly with a red line. This should include all land necessary to carry out the proposed development. A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.
6. The identification of the site with a red line fulfils the statutory requirement set out above. In identifying the land to which the application relates, it also

identifies the land in relation to which any permission is granted. It is therefore essential for the red line to be drawn correctly.

7. The appeal site is set within a steeply sloping field owned by the appellant. This is identified on the plans with a blue line. Within this context the red line has been tightly drawn around the outline of the proposed building, an adjacent area of hard standing, and the access track. It thus excludes land required to fully form the engineered platform on which the proposed building would stand, as is confirmed by the sections, and land required to provide related drainage, including a large attenuation basin. It also excludes areas in which landscaping is shown as 'proposed' on the submitted plans, and within which it has already been partly implemented. Though the plans additionally omit a silo which is described within the supporting information, this element of the scheme has since been withdrawn. In view of the above, it would be impossible to fully implement the proposed development within the confines of the site as defined by the red line. This matter could not be appropriately resolved within the context of any planning permission.
8. There appears to be no apparent reason for the red line being drawn in the way that it was. The site might more logically have been identified as the field. Be that as it may, it is not for me to correct the error. Ultimately, the application as originally submitted failed to comply with the information requirements set out above. Its consequent invalidity was not resolved by the submission of a revised plan.
9. Section 79(6) of The Town and County Planning Act 1990 (as amended) provides discretion for me to decline to determine an appeal or to proceed with its determination, if it emerges during the appeal process that planning permission could not have been granted by the Local Planning Authority. My findings above indicate that this is the case. That being so, I shall proceed no further with my consideration of this appeal.

Conclusion

10. For the reasons set out above I conclude that the application was invalid. As planning permission could not have been granted by the Local Planning Authority, I decline to determine the appeal or to proceed with its determination.

Benjamin Webb

INSPECTOR