



Appeal Decision

Site visit made on 11 June 2024

by C Cresswell BSc (Hons) MA, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/W1145/W/23/3331399

The Wag Pad, Dobles Lane, Holsworthy, EX22 6JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr C Stinson against the decision of Torridge District Council.
 - The application Ref is 1/1083/2022/OUTM.
 - The development proposed is residential development (up to 21 dwellings).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved for future determination. I have considered the appeal on that basis.
3. The Council confirms in its Appeal Statement that it is able to demonstrate a five year supply of deliverable housing sites.

Main Issues

4. The main issues in this case are:
 - whether the site provides a suitable location for the proposed development, having particular regard to development plan policy.
 - the effect of the proposed development on the living conditions of future occupiers, having particular regard to noise.

Reasons

Location

5. Policy DM13 of the Local Plan¹ aims to safeguard employment sites. The policy indicates that non-employment uses will not be supported *on allocated sites or in buildings previously used for employment or in buildings currently used for employment* unless certain conditions are met. These conditions are set out in parts (a) to (d) of the policy.
6. The appeal site is occupied by an active kennels business (The Wag Pad) and is therefore in employment use. However, while the site contains a building and various other structures, it is mainly open land. As such, most of the area which is being proposed for housing development does not concern buildings previously or currently used for employment purposes. Nor is the site allocated

¹ North Devon And Torridge Local Plan 2011-2031

in the Local Plan. Hence, apart from the existing building, Policy DM13 does not prohibit development of the site for residential uses.

7. Both parties provide evidence in relation to parts (a) to (d) of Policy DM13. Among other things, this evidence concerns the availability of employment land in the surrounding area, previous attempts to market the site and also whether the proposal would comply with the sequential test in part (d) of the policy. However, as I have found that the provisions of Policy DM13 do not apply to the majority of the site, these matters are largely irrelevant.
8. I note that paragraphs 13.85 to 13.89 of the Local Plan supporting text refers to *employment sites* and *employment land*. This could be interpreted as a somewhat broader definition than the buildings referred to in Policy DM13. Nonetheless, I base my decision on the specific wording of the policy.
9. The Council also refers to Policy ST11 in its reasons for refusal. This aims to support employment growth in a number of different ways which are set out parts (1) to (7) of the policy. However, the policy does not necessarily prevent homes from being built on the appeal site.
10. That said, it does not automatically follow that housing development is acceptable in this location. Indeed, the site is situated outside the development limits of Holsworthy (as defined in the Local Plan) and is therefore considered to be within the countryside for planning purposes, even though it is on the very edge of the town. According to part (4) of Policy ST07, development in the countryside is *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*.
11. The social needs referred to in Policy ST07 may include housing development in some circumstances. This includes those set out in Policy ST21, which supports proposals for residential development outside development boundaries *if monitoring identifies that the number of dwelling completions across northern Devon in a monitoring year falls below 90% of the annualised dwelling requirement, and the housing trajectory for that year indicates that the rate would not recover to an average of at least 100% for the two subsequent monitoring years*. However, little evidence has been provided to show that these conditions have been met. As such, I am unable to determine that the proposal can be justified on the basis of Policy ST21.
12. Policy HOL sets targets for the minimum amount of new homes to be built in and around Holsworthy up to 2031. Table 10.10 of the Local Plan indicates how this will be delivered through existing commitments and new site allocations. While additional sites may be required if delivery falls short of expectations, there is insufficient evidence to show that the appeal site is currently required to meet the housing targets set out in Policy HOL.
13. I therefore conclude on this issue that the site does not provide a suitable location for the proposed development.

Noise

14. The appellant's noise assessment² indicates that sounds from the neighbouring industrial estate can be heard within the appeal site during the day and night.

² BS4142 Noise Impact Assessment, Soundguard Acoustics Ltd, February 2023.

One source of this sound is an industrial press at Greenfield Engineering, which is situated close to the site boundary. The indicative plans show proposed housing close to this part of the boundary and measurements were taken in this location as part of the noise assessment. The results indicate that future occupiers of the new housing would be likely to experience adverse impacts. However, the noise assessment goes on to describe mitigation measures and says that *where planning boundary noise conditions are met and where this is supported with a robust noise mitigation strategy, then noise levels are significantly reduced and no adverse noise impact becomes likely.*

15. Most of the mitigation measures described in the noise assessment concern the layout and design of the proposed housing and would be relatively easy to implement. However, the strategy is also dependent on Greenfield Engineering complying with a planning condition³ which was imposed in July 2001. This specifies maximum noise levels at different points along the site boundary. Whether or not Greenfield Engineering comply with this condition is clearly beyond the control of the appellant.
16. Paragraph 188 of the Framework⁴ considers pollution control regimes and advises that *planning decisions should assume that these regimes will operate effectively.* However, in this particular instance, the Council allege that Greenfield Engineering has regularly breached the condition over an extended period of time, thereby making the condition legally unenforceable. While I find the evidence in relation to this matter inconclusive, it nonetheless casts some doubt over the effectiveness of the mitigation strategy. Even if the condition is enforceable, the history of noise investigations indicates that, in practice, the press at Greenfield Engineering has operated during the night. This has disturbed the occupiers of Lower Manworthy and so it seems likely that it would also disturb the occupiers of the proposed new housing.
17. I understand that Greenfield Engineering has agreed to change some of its operating procedures to help reduce noise. This includes avoiding use of the press at night. There are also plans to replace the press with a quieter machine in the future. Yet while these measures have potential to significantly reduce the noise experienced within the appeal site, they are informal commitments and therefore carry some uncertainty. The proposed homes would be permanent features and would very likely outlast any informal arrangements that have been put in place. In the absence of any binding agreements, or confirmed change in circumstances, I do not consider that these measures can be relied upon to provide long-term mitigation.
18. There is some dispute between the parties regarding the noise levels within the site and whether they would have an adverse or significant adverse impact on future occupiers. However, the test in part (2) of Local Plan Policy DM01 is simply whether *the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.* In my view, the evidence indicates that the amenity of future occupiers would likely be harmed as a result of the neighbouring industrial estate.
19. The Council say that the proposed residential use of the site would hinder businesses on the industrial estate due to potential statutory noise nuisance complaints. This partly depends on whether the planning condition concerning

³ Council Reference: 1/0501/2001/29/003.

⁴ National Planning Policy Framework, 2021.

Greenfield Engineering is enforceable. Regardless of this, I have already found that the proposal would conflict with Policy DM01.

20. I am informed that the Council has approved other housing developments next to the industrial estate. However, I am not aware of the exact circumstances of those sites or the evidence that lead to those decisions. As such, they do not establish a convincing precedent for the current appeal.

21. I therefore conclude on this issue that the proposed development would harm the living conditions of future occupiers.

Other matters

22. A signed legal agreement has been provided concerning affordable housing and other contributions. However, as I am dismissing the appeal for other reasons, I have not given any further consideration to this matter.

Conclusion

23. For the reasons given above, the appeal is dismissed.

C Cresswell

INSPECTOR