



Appeal Decision

Site visit made on 22 July 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Appeal Ref: APP/U1105/W/24/3337198

**Land adjacent to The Gardens, Blackhorse Lane, Blackhorse, Devon
EX5 2FT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs H Mitchell against the decision of East Devon District Council.
 - The application Ref is 23/0332/FUL.
 - The development proposed is construction of 5 dwellings with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Mrs H Mitchell against East Devon District Council. The application is the subject of a separate decision.

Preliminary Matter

3. I have taken the address from the Council's decision notice as that provided in the application form is incomplete. Additionally, the appellant uses the address provided by the Council in its appeal form.

Background and Main Issues

4. Since issuing its decision, the Council says it can now demonstrate a sufficient housing supply, which is not disputed. This means that its locational policies are no longer considered to be out of date. Both main parties have had an opportunity to comment. As such, neither would be prejudiced by the inclusion of the appropriateness of the location as a main issue.
5. Therefore, I consider the main issues are (i) whether the site is in a suitable location having regard to the local settlement strategy; (ii) the effect of the proposed development on the character and appearance of the area; and (iii) whether the proposed development would provide acceptable living conditions for future occupants, with regard to noise.

Reasons

Location

6. Policy 7 of the East Devon Local Plan (LP) only permits development in the countryside where it accords with a specific local or neighbourhood plan policy

that explicitly permits such development. Whilst in the countryside as defined in the LP, there is little evidence of any conflict with Strategy 5B and Policy TC2 of the LP. However, these policies do not explicitly support residential development. As such, there would be conflict with LP Policy 7. Therefore, the site is not in a suitable location having regard to the local settlement strategy. It would consequently conflict with Policy 7 of the LP.

Character and appearance

7. The appeal site comprises an attractive, undeveloped field on steeply sloping undesignated land, where it joins the narrow and sunken Blackhorse and Mosshayne lanes on its lower side. In that context, the appeal site's contribution to the area derives from its elevated position, particularly when viewed from higher ground on Mosshayne Lane. There are properties beyond the southern and western boundaries of the appeal site of varying design. Additionally, road fronted, pitched roofed bungalows are located further afield, along Blackhorse Lane to the west. In the other direction, some characterful red brick and rendered buildings are found at the lane's hairpin corner. Despite this nearby development and its mixed architecture, the local character surrounding the appeal site is one that boasts a good degree of rural tranquillity.
8. The scheme would retain much of the tree lined frontage to Blackhorse Lane. It is said that engineering challenges and visual prominence of the steep sloping site has necessitated a lower density development than might otherwise be achieved on nearby level sites already served by transport infrastructure. In that context, attempts have been made to follow a landscape led approach, using the site's contours, cutting the green, flat roofed properties into the slope. This would avoid breaking the skyline. The properties have also been designed to make the most of natural light whilst creating public and private spaces. Although beneficial, these features are commonplace amongst modern housing designs and are not innovative as set out in paragraph 139 of the National Planning Policy Framework (the Framework).
9. Notwithstanding the above, and the proposed soft landscaping, the scheme would still introduce uncharacteristically prominent blocks of built form around substantial hardstandings. The clustered courtyard design of properties and their garages would be tightly packed together on rising land. This lack of separation would read more as a stark single entity of building mass. Additionally, the large, horizontal emphasis of fenestration detail, and metal cladding against the brick would be unusual design features. Whilst the external finishes may soften over time, for the reasons given, the eye would be drawn to the non-traditional design. The proposal would not respect or compliment this sensitive sloped setting.
10. The retained hedge would reduce distant views in towards the development. However, much of the scheme would be highly visible from the adjoining Mosshayne Lane and Blackhorse Lane. These lanes form part of a strategic walking and cycling network and at the time of my visit, were well used for such purposes. Even if the visual effects of the development were reduced over time with successful planting, and the identified permissions and neighbourhood plan allocation were to come forward, the proposal would still irrevocably erode a characterful and well-preserved area within the local

landscape. It would not therefore represent an efficient use of under-utilised land as defined in the Framework.

11. For the above reasons, the proposal would cause harm to the character and appearance of the area. As such, it would be in conflict with Strategy 7 and Policy D1 of the LP; and Policy D1 of the Broadclyst Parish Council Neighbourhood Development Plan, July 2023 which, collectively in this respect, and amongst other things, say that proposals should not harm the distinctive landscape qualities within which they are located. Proposals should respect or compliment local character and will only be permitted where they ensure the scale, massing, density, fenestration, and materials of buildings relate well to their context. There would also be conflict with paragraph 135 of the Framework which, in part, says that decisions should ensure developments are sympathetic to local character and visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Noise

12. There is dispute between the main parties over which dB contour the appeal site lies within. Although the growth of the airport has been slower than predicted, the Council considers the use of predicted 2030 dB contours are appropriate to safeguard possible future expansion. Growth at these levels is unlikely to proceed in the near future. Furthermore, technical advances and quieter aircraft may be developed. Nevertheless, this remains a reasonably cautious approach. If I were to accept the appellant's assertions in this respect, the appeal site would be within the 57-60dB contour. Within the evidence, it is likely that this would still be higher than generally accepted external noise levels for gardens. Regardless of this, the actual dB levels are not known.
13. In that context, the Council is concerned that the design, layout, and orientation of the proposed properties has not been informed by potential noise constraints. The appellant says that based on a review of planning applications where noise was an issue, external noise can only be dealt with internally. However, there is no firm evidence that the design and layout of a scheme could not be tailored to mitigate against or reduce external noise.
14. Accordingly, my attention has been drawn to a nearby scheme for 44 dwellings in the same dB contour as the appeal site. There, the Council's Environmental Health Officer made the point that relatively quiet private space for residents or a nearby public park may be regarded as a mitigating factor. Though it is noted those comments were in acknowledgement of a lack of housing supply and the broad support for that larger scale scheme, making best use of land. The schemes are not comparable. In any case, no such mitigating factors have been advanced in support of this proposal.
15. Even if internal noise levels could be secured by the use of an appropriately worded condition, it is simply not known how much mitigation would be needed, or whether the scheme's design and layout would provide relatively quiet or the optimal arrangement of external amenity spaces. The use of a planning condition would therefore not be appropriate. As such, I am not persuaded that a noise assessment that could show actual levels of aircraft noise at the appeal site, would be unnecessary.
16. For the above reasons, it has not been demonstrated that the proposed development would provide acceptable living conditions for future occupants,

with regard to noise. As such, it would be in conflict with Policy EN14 of the LP which, in this respect, does not permit development that would result in unacceptable levels to residents of noise. There would also be conflict with paragraph 193 of the Framework which, in part, says that decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. Where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.

Other Considerations

17. The Council says that the appeal site is within a sustainable and accessible location, where car use could be minimised. Additionally, it cites the approval of a number of small scale and notable major housing developments in the Blackhorse area, a local centre, recreational facilities, and the Exeter Science Park. The locational benefits of the scheme weigh moderately in its favour.
18. The scheme would make a positive contribution towards the supply of housing, albeit the benefits of 5 dwellings would be modest. It would also bring some limited economic benefits to the construction industry and thereafter through additional consumer spending in the local economy. Additionally, the proposal would deliver some limited benefits in respect of adequate parking/cycle storage, biodiversity enhancements, energy efficient, sustainably constructed properties with electric vehicle charging points and the ability to fit solar.

Other Matters

19. The appellant's comments in respect of the processing of the application, including those relating to the Council's validation requirements, are noted. However, they have no bearing on my decision which is based on the planning merits of the proposal.
20. The parish council support is noted, though this is not a reason to allow unacceptable development.
21. The appellant refers to various case law in terms of consistency in decision making, where like cases should be decided in a like manner. My attention has been drawn to a number of planning applications that the Council approved. However, I have been provided with very little information on their site-specific layouts or circumstances. The Council acknowledges that some of these were granted without consultation with their Environmental Health Officers. This led to permissions being granted within the noise vector of the airport without appropriate mitigation measures. This lack of consistency is unhelpful though is not a reason in itself to allow unacceptable development. Even so, based on the evidence before me, I have concluded that it has not been shown that the living conditions of future occupants would not be harmfully affected by noise.
22. The appellant refers to the acceptable effects on neighbouring living conditions, highways safety, arboriculture, and aerodrome safeguarding. However, these matters are not in dispute. Had I been minded to allow the appeal, some of these matters could have been addressed using appropriately worded conditions. In any case, these are neutral factors that do not affect the outcome of the appeal.

23. The appeal site is within an area where the evidence shows that adverse impacts of residential development on the Pebbled Heaths and Exe Estuary Special Protection Area can be satisfactorily addressed through a financial contribution towards the South-east Devon European Site Mitigation Strategy. The appellant has submitted a signed unilateral undertaking which secures this. Therefore, any such impacts from the development do not form a clear reason for refusal.

Conclusion

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
25. I have concluded above that the proposal conflicts with the development plan, when taken as a whole. Furthermore, even when considered cumulatively, the weight given to the other considerations would not offset the identified harm. Accordingly, other considerations do not therefore indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed.

J Hills

INSPECTOR