
Appeal Decision

Site visit made on 28 August 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2024

Appeal Ref: APP/U1105/W/24/3338889

Elsdon House, Elsdon Lane, West Hill, Devon EX11 1UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for permission in principle.
 - The appeal is made by Mr Gary Moore of The Land and Planning Consultancy Ltd against East Devon District Council.
 - The application Ref is 23/2535/PIP.
 - The development proposed is permission in principle for the demolition of an existing greenhouse and the construction of two dwellings.
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Decision

1. The appeal is dismissed and permission in principle for the demolition of an existing greenhouse and the construction of two dwellings is refused.

Preliminary Matters

2. The proposal is for permission in principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use, and the amount of development¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. A Site Plan has been submitted, which is clearly marked as illustrative. I have therefore considered this as such.
5. The appeal relates to an application that was not determined by the Council within the prescribed period. I note that the Council would have refused permission in principle should it have made a decision on the proposal. I have had regard to the parties' submissions and those of interested parties in my consideration of the appeal.
6. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and

¹ Paragraph: 012 Reference ID: 58-012-20180615; Revision date: 15 06 2018

other changes to the planning system, with an accompanying Written Ministerial Statement (WMS). I invited the main parties to consider the relevance of these proposals to the appeal, and have taken account of the parties' comments in my decision.

Main Issue

7. The main issue is whether the site is suitable for residential development having regard to its location, the proposed land use, and the amount of development.

Reasons

8. The appeal site is located towards the eastern end of West Hill, on a corner plot adjacent to the junction of Lower Broad Oak Road and the private access drive to Elsdon House. It comprises a substantial vegetable garden including a number of structures including greenhouses and a polytunnel, and is enclosed by mature hedgerows. Access to the appeal site is currently provided from the north via the private driveway.
9. Strategies 1 and 2 of the East Devon Local Plan 2013-2031 (the Local Plan) describe a spatial strategy for the distribution of development that focusses growth on the district's West End settlements and allocations, along with its main towns. It sets out that development in smaller towns, villages and rural areas will be geared to meeting local needs. Strategy 27 of the Local Plan alongside the East Devon Villages Plan (2018) (the Villages Plan) identifies a list of small towns and large villages with defined Built-up Area Boundaries (BUAB), at which the Local Plan anticipates a moderate level of growth. The settlements listed are those which offer a range of accessible services and facilities with reasonable public transport, and include West Hill.
10. The appeal site lies adjacent to but outside the BUAB for West Hill. Strategy 7 of the Local Plan provides that parts of the plan area outside the BUAB are considered to be in the countryside. This policy seeks to restrict development outside of the BUAB unless it meets two requirements. Firstly that it accords with a specific Local or Neighbourhood Plan policy which explicitly permits the development, and secondly where there would be no harm caused to the amenity and environmental qualities of the distinctive landscape in which it is located.
11. The Council is satisfied that the proposal could come forward without harm to the character or appearance of the area, including its trees, with regard to the second requirement of Strategy 7 and the character-themed policies of the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill (2017-2031) (the Neighbourhood Plan). While I have had regard to the Parish Council's objection in respect of this matter, my observations on site were that, subject to the detailed design considerations of the technical details consent stage, two dwellings could be accommodated on the site without adversely affecting the low density residential and sylvan character of the locality. As such, I find that in principle, the proposal would not harm the amenity and environmental qualities of the distinctive landscape, in accordance with the second requirement of Strategy 7.
12. It is therefore necessary to consider whether there are any specific policies of the development plan which explicitly permit the proposal.

13. My attention has been drawn to an appeal decision for a proposal opposite the appeal site² in which the Inspector found the location to offer reasonable access to local facilities. West Hill contains a modest collection of facilities including a shop, village hall, and primary school, along with public transport links from the village centre, each of which lie approximately 500m away from the appeal site. I observed on site that the route to reach these facilities partially comprises an unlit residential lane without pavements, but the area is lightly trafficked with slow vehicle speeds. The remainder of the route is served by pavements and street lighting. It would therefore be possible to walk or cycle this route with relative ease. While other village facilities lie at a slightly greater distance, they would still be within a reasonable distance to walk or cycle along quiet lanes.
14. The location of the proposal would therefore accord with Strategy 5B and Policy TC2 of the Local Plan insofar as they seek to promote sustainable modes of travel and minimise the need to travel by car. However, neither of these policies explicitly permits development outside of the BUAB as required by Strategy 7, and it has not been put to me that any other policies of the Local Plan or Neighbourhood Plan would explicitly permit the proposal.
15. The appeal site is surrounded on three sides by existing residential development, and the village extends a considerable distance further south. However, the BUAB does not encompass all of the village development, reflecting the sporadic nature of much of the peripheral settlement. The presence of existing development beyond the boundary does not therefore provide a clear justification for, or otherwise permit, the proposal's location outside the BUAB.
16. The appellant also highlights that the appeal site has previously been assessed as part of the Council's Housing and Economic Land Availability Assessment (HELAA), but the evidence confirms that it has not been taken forward as a draft allocation for the emerging East Devon Local Plan. The technical assessment of the HELAA process is not the same as the consideration of a permission in principle application. As such, the fact that the appeal site has been assessed as part of a HELAA process does not permit or offer explicit support for the development of the site outside the BUAB.
17. Drawing these matters together, I find that the proposal would be located in the countryside, and would not be explicitly permitted by any other policies of the development plan. As such, it would conflict with the development plan's strategy for housing growth as described by Strategies 1, 2, and 7 of the Local Plan. I therefore conclude that the site is not suitable for residential development having regard to its location, the proposed land use, and the amount of development.
18. In its putative reason for refusal, the Council has also referred to Strategy 6 of the Local Plan. As this relates to development within BUABs, its provisions are not determinative to the appeal before me.

² Appeal reference APP/U1105/W/17/3183352

Other Matters

19. Reference has been made to a number of appeal decisions³ which are said to be particularly relevant to the key issues. I have very limited information on the schemes and considerations before the decision makers for each of these proposals with which to draw any meaningful comparisons to this appeal. However, several are located at different settlements across East Devon, and will therefore have a different context to this appeal. Those that do relate to development at West Hill were determined prior to the adoption of the Villages Plan and the BUABs, along with the 2024 revision to the Framework. The local and national policy framework, particularly with regard to the BUABs and the Council's housing land supply position, are therefore not comparable to the situation before me now. As such, while I have had regard to these decisions they carry very limited weight in my determination of this appeal.
20. The appeal site is within the zone of influence for the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area, afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. Although both main parties have provided information in this regard including a completed S111 form securing a habitat mitigation contribution, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Planning Balance

21. The Council's draft local plan has reached Regulation 18 stage. Paragraph 226 of the Framework indicates that where an authority has an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 stage, they will only be required to demonstrate a minimum of 4 years' supply of deliverable housing sites. The Council identifies that it is able to demonstrate a 4.5 year supply of housing land, and this is not disputed by the appellant. I am therefore satisfied that the authority is able to demonstrate the minimum of 4 years' supply, and paragraph 11d) of the Framework is not engaged.
22. Under the Government's proposed changes to national policy⁴, the Council would be required to demonstrate a five-year supply of housing land, rather than four. There is no apparent dispute between the parties that, in that scenario, the presumption in favour of sustainable development at paragraph 11d) of the Framework would be engaged because the Council's demonstrated supply falls short of five years. However, there is disagreement over the weight to be given to the Government's proposed changes in this appeal.

³ Appeal references APP/U1105/W/17/3181152, APP/U1105/W/22/3298314, APP/U1105/W/16/3156018, APP/U1105/W/15/3139662, APP/U1105/W/18/3194093

⁴ Proposed reforms to the National Planning Policy Framework and other changes to the planning system, Published 30 July 2024.

23. The proposed revisions to the Framework are draft and in an early stage of consultation, and therefore may be subject to change before any revised Framework is published. I recognise the significance of the WMS⁵ in setting out the Government's approach to housing targets. However, it does not refer to the specific detail of the proposed wording changes affecting Framework paragraphs 11d), 226, and footnote 9. Consequently, I give the proposed wording changes only limited weight at this stage, and they do not change my finding regarding paragraph 11d).
24. Accordingly, in the absence of any other circumstances engaging paragraph 11d) of the Framework, paragraph 12 says that, where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. The Framework is clear that decisions may be made that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.
25. I have found conflict with the development plan in respect of its spatial strategy for housing set out by Strategies 1, 2, and 7 of the Local Plan. These strategies are broadly in accordance with the Framework's objectives to promote sustainable patterns of development that meet the development needs of the area. The BUABs form part of the statutory development plan, and will have been adopted following consultation and scrutiny at examination. To allow new dwellings to be built outside BUABs, even in small numbers, would undermine the Council's development strategy for the location of housing in settlements and the countryside. The proposal therefore conflicts with the development plan as a whole, and this is a material consideration which attracts significant weight.
26. That there would be no harm at this stage of the permission in principle consent route in respect of matters including accessibility, local character, highway safety, ecology, drainage and flooding, trees, and neighbouring amenity, are neutral considerations that do not carry weight in favour of the appeal.
27. I am mindful that the Council's housing targets are not a ceiling figure, and that the site would be a small windfall site that would contribute towards the Council's supply of housing, as well as the Government's objective to significantly boost the supply of homes. The proposal would also make an effective use of land, and there would be some limited social and economic benefits associated with the construction and subsequent occupation of the dwellings. However, as the appeal site would deliver only two dwellings, I afford these benefits modest weight.
28. The appellant also highlights the current and future pressures on the Council's land supply resulting from the timetable of the emerging Local Plan, the time limit of the application of paragraph 226 of the Framework, and the implications of the Biodiversity Net Gain requirements on future land availability. While these are evidently significant challenges that the Council will need to address, as a result of the small scale of the appeal site, I afford its benefit in helping to meet these challenges limited weight.

⁵ Building the homes we need, statement made on 30 July 2024. Statement UIN HCWS48.

29. Accordingly, even in totality, the benefits of the proposal would be limited in scope and scale, and would not outweigh the conflict with the development plan.

Conclusion

30. The proposal conflicts with the development plan and the material considerations do not indicate that a decision should be made other than in accordance with it. I therefore conclude that the appeal is dismissed.

K Jones

INSPECTOR