



Appeal Decision

Site visit made on 11 March 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2025

Appeal Ref: APP/W1145/W/24/3348227

Little Hayes Lakes, Ashreigney EX18 7NG

- 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 Ms Lorna King against the decision of Torridge District Council.
 - The application Ref is 1/0993/2023/FULM.
 - The development proposed was originally described as “change of use from a mixed use of agriculture and commercial, to a mixed use of agriculture, commercial and for tourism involving the installation of 4 no. cabins for holiday accommodation.”
-

Decision

1. The appeal is dismissed.

Applications for costs

2. Costs applications have been made by the main parties against each other. These are the subject of separate decisions.

Preliminary Matters

3. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 12 December 2024. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
4. It is noted that the Council sought to change the description of the development to *change of use from a mixed use of agriculture and commercial, to a mixed use of agriculture, commercial and for tourism (caravan site), including associated infrastructure*, which was agreed by the appellant. In that context, in addition to 4 new holiday cabins, the Council highlights that as part of the proposal, the scheme seeks permission for an existing static caravan and container located at the centre of the site. I saw a further container near the site entrance. These elements are shown on the plans, and I have dealt with the appeal on that basis.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - highway safety;

- whether the site is a suitable location for the proposed development having regard to local and national policy;
- the effect of the proposed development on biodiversity; and
- whether the site can be suitably drained.

Reasons

Character and appearance

6. Despite nearby properties, the appeal site is within part of the open countryside that is locally recognised for its gently undulating landform, contrasting green fields and surrounding farmland, offering long views at elevation. While the appeal site would be set within and adjacent to woodland, views of it can still be appreciated from the surrounding roads and properties. Its rural setting maintains a strong sense of tranquillity and remoteness which is recognised within the Council's Landscape Character Assessment.
7. Amongst other things, the North Devon and Torridge Local Plan (LP) design and landscaping policies set out in ST04, DM04, and DM08A are concerned with improving the quality of development, its layout appearance, reinforcing key characteristics and qualities of an area, respecting its landscape character. They are not limited to proposals for built form and would consequently be applicable to this proposal.
8. It is acknowledged that there are no nearby public rights of way and much of the appeal site is well screened. Where necessary, and to deal with more exposed areas, additional landscaping could be introduced using an appropriately worded condition. Notwithstanding the Council's submissions in respect of the sizes of caravans shown on the plans, layout details could also be sought in a similar way.
9. Nevertheless, even if sympathetic materials could be secured by condition, the siting of caravans across the appeal site would introduce a more permanent, formal, and urbanised layout arrangement into this rural landscape setting. This, together with the hive of activity borne from comings and goings of vehicles, and the presence of paraphernalia brought onto the appeal site by intended users and occupiers would erode its overall sense of tranquillity.
10. For these reasons, while the harm would be moderate, the scheme cannot be said to enhance key characteristics of relevant landscape character types as required by criterion (f) of LP Policy DM18 or add to the overall quality of the area as set out in paragraph 135 of the Framework. Consequently, I conclude on this main issue that the proposal would harm the character and appearance of the area. There would be conflict with LP policies ST04, DM04, DM08A, and DM18.

Highway safety

11. The County Highways comments are acknowledged, though these have been made on the basis that the appeal proposal would not be used as a caravan site and are limited to traffic generation rather than the suitability or otherwise of the access.
12. The plans show an access to the appeal site from the highway that is reflective of the existing arrangement. It covers a small area of the part of the appeal site

fronting the highway. No access improvements are proposed or shown on the plans, and instead the appellant relies on the suitability of the access based on a previous permission. That had substantial access works required to improve visibility, which did not appear to have been provided. Additionally, although the number of visitors was not controlled by the Council at the time, that scheme did not include accommodation. Moreover, it is not clear how much traffic might be generated from the claimed 'other uses' of the site, though this would be likely to be minimal. Therefore, the overall suitability of any previously agreed access and its effects on the highway network would be different when compared with this proposal.

13. At my visit, I attempted to emerge onto the highway from the appeal site. Visibility was extremely limited due to high hedges, the rising topography, and bends in the road. Notably, the driver of a passing vehicle had to swerve suddenly to avoid my car when I was edging forward. I share the Council's concerns that the visibility when exiting the appeal site is severely restricted and felt particularly unsafe. As a consequence, I cannot be certain that the safety of public highway users would be maintained as required by criterion (e) of LP Policy DM18.
14. By permitting the use of the appeal site as a campsite and fishing tourism destination, vehicle movements at this access would be likely to be significantly greater than any current situation. Having paid regard to the previous scheme, extensive improvements, including hedge realignment works would be a likely requirement. This would be likely to be at substantial variance to the existing arrangement. In these circumstances, it would not be appropriate to attempt to deal with this matter using a planning condition, as road users, consultees or others may have an interest or wish to be consulted on such proposed works. This is a matter in this particular case that requires further investigation ahead of the grant of planning permission.
15. For these reasons, the proposed development would have a harmful effect on highway safety. As such, there would be conflict with LP policies DM05, ST10 and DM18 which, amongst other things, seek to protect the function and safety of the road network, ensuring the provision of a safe and well designed vehicular access which considers the needs of all highway users. There would also be conflict with paragraph 115 of the Framework which says in assessing applications for development, it should be ensured that a safe and suitable access to the site can be achieved for all users.

Location

16. The appeal site comprises a collection of lakes and a wooded area that form a tranquil rural setting. There are also containers, a small caravan, a static caravan, platforms, and small sheds within the appeal site. An access track hugs part of its boundary and joins a narrow country lane. Isolated from any settlement, the appeal site is in the countryside as defined in the LP. Consequently, users of it would be most likely to travel to the appeal site by private vehicle rather than public transport, cycling or walking as encouraged in the Framework.
17. LP Policy ST01 sets out the principles of sustainable development in the district, which, amongst other things, seeks to approve proposals that accord with policies in the LP, securing development that improves economic, social and environmental conditions in the area. The Council's spatial strategy within

LP Policy ST07 is to achieve an economically resilient and active rural area. It focusses most development to the largest centres, with modest growth permitted in the smaller settlements. In the countryside, development is limited, in part, to that enabled to meet local economic needs, which is where the appellant's case is focussed.

18. In this respect, LP Policy ST13 is supportive of sustainable, high quality tourism development for a year-round industry that does not damage the natural or historic assets within the district. In respect of the latter, there is no dispute between the main parties that heritage assets would be preserved by the development. I have already concluded above that the scheme would cause harm to the character and appearance of the area. Setting that aside, the supporting text to LP Policy ST13 notes that sustainable tourism is achieved through enhancement, focusing on qualitative improvements, such as expanding existing facilities. The enhancement of existing attractions and destinations will be given support.
19. In addition to these strategic aims, LP Policy DM18 contains a detailed approach to tourism development. Part (2) of it applies to this appeal scheme and is supportive of new, expanded, or rationalised existing tourism accommodation where it *(a) is related directly to and compatible in scale with an existing tourism, visitor or leisure attraction; or (b) reuses or converts existing buildings; or (c) improves facilities for or diversifies the range or improves the quality of existing tourism accommodation*. This is subject to compliance with a number of additional criteria in (d) to (h) which I shall return to later. Part 2 (b) is not relevant to this appeal.
20. In respect of part 2 (a), it is claimed that the appeal site is an established tourism and leisure attraction, consistent with a previous permission¹. However, that permission contained a pre-commencement condition relating to the requirement for a re-aligned hedgerow for the site access visibility splay. The Council says it has no record of this ever being discharged and I find no reason to disagree. Moreover, as mentioned above, I did not see an access or site layout arrangement reflective of the 2018 permission. It is not my role to determine whether a use or operation is lawful, as this can only be formally determined by a lawful certificate application. Recognising the Council previously supported a commercial recreational fishery, there is very little evidence before me to demonstrate that permission can be relied upon in support of the proposal's compliance with local policy. It is a material consideration that can be attributed very little weight.
21. The appellant refers to an ongoing coarse fishery use on ponds to the north of 2 private conservation ponds that are from a 2008 permission². The officer report that accompanied that permission noted that the older ponds were created some 26 years prior and were breeding grounds for various wildlife that also contained Rudd and Carp. The Council acknowledge that recreational fishing lakes can be considered an existing tourism attraction. Even so, although the appeal site is said to have been used as a coarse fishery facility by anglers for nearly 40 years, in this respect, there is no compelling evidence to show that the northern ponds amount to much more than private wildlife waters stocked with fish.
22. The evidence shows that 1 lake has been advertised as being reserved for wild swimming, though details are scant in this regard. Overall, it has not been

¹ Application ref 1/0532/2018/FULM

² Application ref 1/0081/2008/FUL

convincingly demonstrated that the appeal proposal relates directly to an existing tourism, visitor or leisure attraction as required by part (2) (a) of LP Policy DM18.

23. Turning to holiday accommodation, the Council refers to its informal Frequently Asked Questions (FAQs) on the LP. The FAQs explains the Council expects information that sets out the scale and nature of the existing tourist accommodation being used to justify the proposal and evidence to demonstrate such accommodation is well established, such as trading accounts and bookings information. This document does not form part of the development plan and can only be given very little weight. It does however provide some useful guidance on how DM18 should be interpreted.
24. In that context, my attention has been drawn to an appeal decision at Witheridge³ where an Inspector concluded that yurts could be said to comprise tourism accommodation when considering LP Policy DM18. Be that as it may, in their overall assessment, the Inspector was confident that site had been run as a tourist operation for some time. With this proposal, the appellant says that the appeal site has been used for camping as part of claimed established commercial fishing/angling activities, though I have already concluded above that previous permissions or activities are not shown to amount to an existing tourism operation or facility.
25. Additionally, it is asserted that camping on site has taken place exercising permitted development rights⁴. While there are said to have been up to 400 visits per year, and having paid regard to the submitted screen shots advertising the appeal site, it is not clear how many of those involved camping. Anecdotal evidence from 3rd parties suggests the intensity of camping may have been very limited. This is consistent with my own observations where much of the appeal site appeared to be rather neglected, very boggy across large areas, and not obviously set up as an existing campsite, with its less than welcoming private land signs. Although, it is acknowledged that this is just a snapshot in time, recognising appearances and ground conditions may alter in the summer months.
26. Even so, in this particular case, that is materially different to the Witheridge appeal, the evidence does not go far enough to show that any camping that may have taken place is reflective of a campsite. Neither, having paid regard to the LP Glossary definitions does it amount to existing tourist accommodation. In these circumstances it is not necessary to explore whether the proposed accommodation would improve facilities, diversify the range or improve quality by expanding accommodation type or periods of use, as suggested. There would be conflict with part (2) (c) of LP Policy DM18.
27. Drawing these matters together, it is acknowledged that the appeal proposal links with existing lakes in a countryside location that could not be sited elsewhere. Moreover, the support for tourism development in the LP is acknowledged, though in rural areas this should relate to existing facilities or accommodation without causing harm to the character and appearance of the area, or the safety of highway users. I have already concluded above that the proposal would cause harm in these respects. Consequently, there would be conflict with parts (2) (e) and (f) of LP Policy DM18. This is consistent with the Framework where it says in paragraphs 88 and 89 that decisions should enable sustainable rural tourism and

³ APP/X1118/W/22/3310242

⁴ Town and Country Planning (General Permitted Development) (England) Order 2015

leisure developments which respect the character of the countryside and does not have an unacceptable impact on local roads.

28. Therefore, the proposal would undermine the overall strategy of the LP to direct development to the most sustainable locations. For the reasons given there would be conflict with LP policies ST01, ST07, ST13, and DM18.

Drainage

29. The appellant says that the proposal would be served by a new true clean package treatment plant as part of a sustainable drainage scheme. However, short of an email description, I have not been provided with any robust details relating to such a scheme. It is claimed that foul water could be discharge into the existing watercourse on the western boundary of the appeal site, though the location is not specified. While this may exist, the Council is concerned that the video footage presented to it shows a ditch, rather than a watercourse. The lack of compelling evidence in this regard means the suitability or otherwise of this method of discharge is simply not known. Neither is it known how far away a possible watercourse would be from the statics. There are consequently uncertainties over its appropriateness as a drainage solution.
30. The appellant says that if this is not acceptable in regulatory terms, drainage could easily be provided within a drainage field instead. However, no percolation tests have been carried out. When walking around the lower part of the appeal site where statics 1 and 2 would be located, most of the ground was extremely boggy, despite being ticked as not marshy or waterlogged in the appellant's foul drainage form. Given the very poor ground conditions, it is unclear whether or not this would be a suitable drainage option. For the above reasons, it would not be appropriate to attempt to deal with this matter using a planning condition along the lines suggested by the appellant.
31. For the reasons given, it has not been convincingly demonstrated that the appeal site could be adequately drained. Consequently, there would be conflict with LP policies ST03, DM02, and DM04 which, in part, aim to provide effective water management, avoiding unacceptable impacts on surface or ground water.

Biodiversity

32. One of the Council's reasons for refusing the scheme relates to insufficient information in respect of protected species. In an attempt to overcome this reason, the appellant has provided an ecological impact assessment. Within this document, it is concluded that the appeal site is of high value and of local importance for bats. Additionally, it is noted that there is a risk of introduction of light barriers for foraging and commuting bats. Low level exterior lighting to serve parking areas or walkways should be kept to the bare minimum, though could be secured using an appropriately worded condition.
33. However, the report advises that there must be no light spill onto woodland or wetland habitat from interior or exterior lighting. Reference is made to best practice guidance in this respect, though limited detail is provided other than this being related to siting lights on or within buildings. This scheme does not involve buildings.

34. The appellant claims that the introduction of blinds to deal with light spill could be secured using a planning condition. For this option to be effective, all light emanating from the caravans would effectively need to be blacked out. It is not clear how this would be practically possible to achieve when windows and doors need to be opened for ventilation or access, or when the wind blows curtains or blinds. Moreover, it would be unreasonable to expect occupants to be cooped up as night falls. For these reasons, it would not be reasonable or enforceable to attempt to impose such a condition. Neither would the removal of certain permitted development rights avoid light-spill in this locally important area for bats. Accordingly, I cannot be certain that the effects on protected species would not be significant.
35. I therefore conclude on this main issue that the proposed development would have an unacceptable effect on biodiversity. As such, there would be conflict with LP policies ST14 and DM08 which, amongst other things, seek to avoid adverse impacts on protected species and the habitats on which they depend. There would also be conflict with paragraph 193 of the Framework which says, in part, that if significant harm to biodiversity resulting from a development cannot be avoided or adequately mitigated, then planning permission should be refused.

Other Considerations

36. The appellant refers to fallbacks in respect of exercising certain permitted development rights to site motor caravans, touring units, tents or other recreational camping pitches on the appeal site for up to 60 days a year, or operations connected to the site as per the *Wealden* case, as existing or proposed. However, I have been provided with no lawful certificate to define this. Even if these are realistic possibilities, they would not amount to the same type or intensity of development as proposed, that being static caravans that could be placed on the appeal site year-round with the associated intensity of comings and goings, light spill and paraphernalia linked to a tourism use.
37. Moreover, if permission were given for this scheme, there is little reason to suggest the appellant would no longer wish to explore any possible available permitted development rights for additional accommodation. In that context, there is little to show that any other fallbacks using permitted development rights would allow for caravans to be used for tourism year-round. Overall, any such fallbacks would be less harmful than the appeal proposal in respect of intensity of use, and its visual, highway or biodiversity effects. They can be afforded little weight in favour of the proposal.
38. A number of other planning permissions for fishing lakes are advanced as comparable examples. However, the evidence shows that these are likely to relate to existing commercial operations rather than private fishing lakes. I am also not aware of the site-specific circumstances that led to those approvals, particularly in respect of site access arrangements, nor am I bound by any decision of the Council. Whilst material considerations, I give them little weight. Besides, each case must be assessed on its own individual merits.
39. There would be some proportionate biodiversity enhancements through planting, green roofs, and habitat creation, which could be secured using a planning condition. However, there would be harm to protected species and therefore any such environmental benefits would be modest at best.

40. There would be some economic benefits by the provision of staff, local traders, and suppliers for ongoing maintenance. Additional indirect benefits linked to spend in the local area within shops, restaurants, cafes and the like by its customers throughout the year would also arise. These benefits weigh moderately in favour of the proposal.

Other Matters

41. I have paid regard to comments made in respect of the processing of the application, including those relating to validation and biodiversity matters. However, these have no bearing on my decision which is based on the planning merits of the proposal.
42. The appellant refers to a court case relating to the proper interpretation of planning policy which is noted. It is also claimed that the Council erred by referring to 5 caravans, though this number is shown on the plans. In any case, had I been otherwise minded to allow the appeal, the number of units could be controlled using an appropriately worded planning condition.

Planning Balance and Conclusion

43. 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.
44. I have found that the development would conflict with the development plan in that it is not in a suitable location, would harmfully affect the character and appearance of the area, highway safety, biodiversity, and would not be adequately drained. Furthermore, even when considered cumulatively, the weight given to the other considerations would not outweigh 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