



Appeal Decision

Site visit made on 12 February 2025

by **H Faulkner BSc (Hons) MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal Ref: APP/Y1138/W/24/3350606

Shadow Pond Lane, Stoodleigh, Tiverton, Devon EX16 9PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr David Harris against the decision of Mid Devon District Council.
 - The application Ref 24/00285/FULL was approved on 9 August 2024 and planning permission was granted subject to conditions.
 - The development permitted is for the Erection of 7 workshops (Use Class B2) and cafe to serve development (Use Class E) following demolition of general industrial buildings.
 - The conditions in dispute are Nos. 6 and 26 which state that:
Condition 6: The development hereby approved shall not commence above the foundation level until the foul drainage is connected to the public sewer and shall be kept separate from clean water and shall thereafter be retained in perpetuity. No paints/solvents/chemical or any other hazardous waste shall be disposed of to the public sewer.
Condition 26: The café hereby permitted shall be used in conjunction with the approved industrial use of the site and shall at no time be let, sold or otherwise be disposed of a separate business unit.
 - The reasons given for the conditions are:
6. To avoid pollution of the environment in accordance with Policies S9 and DM4 of the Mid Devon Local Plan 2013-2033.
26. In accordance with the applicant's submission and having regard to the site location in accordance with Policies S14 and DM18 of the Mid Devon Local Plan 2013-2033.
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Decision

1. The appeal is allowed and planning permission Ref 24/00285/FULL for Erection of 7 workshops (Use Class B2) and cafe to serve development (Use Class E) following demolition of general industrial buildings at Shadow Pond Lane, Tiverton, EX16 9PW granted on 9 August 2024 by Mid Devon District Council, is varied by deleting condition 26.
2. For the avoidance of doubt the appeal is dismissed in so far as it relates to the variation of condition 6.

Applications for Costs

3. An application for costs was made by Mr David Harris against Mid Devon Council. This application is the subject of a separate decision.

Preliminary Matters

4. The description of development I have referred to in the banner heading and in my decision has been taken from the Council's Decision notice. This differs to that used in the application form, albeit slightly in the arrangement and use of the wording. Nevertheless, it accurately reflects the development approved and is consistent with the description in the Council's decision notice. No party is prejudiced through the use of this description.

5. The National Planning Policy Framework (the Framework) was updated in December 2024 and again in February 2025, and for the purposes of this decision I have referred to the latest version of it. The content of the Framework has not been significantly altered insofar as it relates to this appeal, other than paragraph numbering. Therefore, it has not been necessary to seek further views from the main parties in this instance and I am satisfied no party would be prejudiced by determining the appeal accordingly.

Background and Main Issues

6. Planning permission for the development described in the banner heading above was granted in August 2024 (the approved scheme). The application was determined by the Planning Committee, where the wording of condition 6 was changed from the officer recommendation which proposed the use of a package treatment plant (PTP) to connect to the public sewer instead. Condition 26 was attached to ensure the café use on the site should be used in conjunction with the industrial use of the site and not otherwise sold or let.
7. The appellant considers that it is unreasonable for the Council to impose these conditions. It requests that the foul drainage condition is changed to the wording originally recommended in the committee report and the restrictions on the café be removed.
8. Taking into account the above background the main issues are:
 - Whether the use of PTPs would be an appropriate means of providing foul drainage having regard to national and development plan policies; and
 - Whether condition 26 is enforceable and whether the use of the café without the restrictions it imposes would be a sustainable form of development with particular regard to its location.

Reasons

Foul Drainage

9. In respect of drainage the reason for the condition sites Policies S9 and DM4 of the Mid Devon Local Plan 2012-2033 (LP). Policy DM1 of the LP also relates to drainage and is referenced in the committee report.
10. Policy DM1 Part f requires developments to provide appropriate drainage which includes connection of foul drainage to a mains sewer where available. Policy DM4 relates to pollution and permits development where the direct, indirect, or cumulative effects of pollution will not have an unacceptable impact on health, the natural environment or general amenity. Policy S9 concerns matters relating to the environment which amongst other things includes provision of measures to reduce the risk of flooding and the provision of sustainable drainage systems.
11. Paragraph 56 of the Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other aspects.
12. The Framework and Planning Practice Guidance are also material considerations and include further references to flooding and the management of foul drainage.

13. The scheme proposes the use of PTPs as a method of dealing with foul drainage. The use of PTPs is not necessarily unacceptable however, there are a number of factors to be considered as to whether the method should be used in this instance.
14. Policy DM1 is clear that a connection to mains sewer should take place where available. In this case the main sewer is approximately 100 metres from the site. The PPG advises that applications for development relying on anything other than connection to a public treatment plant will need to be supported by sufficient information to understand the potential implications for the water environment. The first presumption is to provide a system of foul drainage discharging into a public sewer. Information from South West Water (SWW) providing details of the costs of connecting to the sewer shows that such a connection is possible.
15. In their correspondence dated 22 July the Environment Agency confirmed that the figure to be used in terms of water usage should be 100 litres per person per day which would be for an office/factory with canteen. Given the proposed café this is a reasonable point of comparison, rather than a commercial use which would be 50 litres per person per day. In cases where 100 litres per person per day is the likely usage, developments should connect to the main sewer if within 128 metres of the site. Even if the PTPs can cope with the likely volumes of water, connecting to the main sewer should be the first option considered.
16. In its current form condition 6 states that the development shall not commence above ground level until the foul drainage is connected to the public sewer. This is consistent with the policy provisions above and therefore I find this to be both reasonable and necessary. The appellant's case is that the cost of connecting to the sewer is not financially sustainable and places an intolerable burden in terms of development costs. SWW quotes £374,876.58 for the works required, however this is on the basis that they laid the pipework, the option to self-lay may reduce the cost.
17. The PPG states that PTPs may only be considered if it can be clearly demonstrated by the applicant that discharging into the public sewer is not feasible taking into account cost and/or practicality. In this case the connection to the sewer is practically possible. No detailed evidence has been provided to 'clearly demonstrate' that the connection to the sewer is not possible due to cost, as required by PPG. Therefore, as it stands the condition 6 meets the tests set out in paragraphs 56 and 57 of the Framework.
18. With regard to any possible pollution there is no substantive evidence to demonstrate that the use of PTPs would lead to an unacceptable pollution risk. Furthermore, there are separate legislation and permits in respect of this matter.
19. Whilst there may be no objection from the Environment Agency, they do reference the calculations which are relevant to connecting to the mains sewer which are relevant to this decision. Furthermore, whilst the consultation response to the application from SWW may accept the approach to drainage this is with regard to surface water rather than foul drainage.
20. The condition in its current form complies with Policies S9 and DM4 of the LP so far as they relate to flood risk and pollution. The proposed amended condition may also comply with these policies. However, it has not been adequately demonstrated that connection to a mains sewer is not viable and, therefore, that it would result in an efficient and sustainable foul drainage system. As such, the

proposed condition conflicts with Policy DM1 and the PPG which set out a clear preference for the use of mains drainage.

Café Use and Ownership

21. The proposal was presented with the café being open to the public and serving the local community. This position was accepted in the committee report. Furthermore, it is acknowledged by the Council that opening the café to local residents and occasional visitors would bring some wider public benefits. The level of parking was acceptable and conditions were imposed in respect of opening hours, ventilation and extraction, noise, and lighting. Condition 24 also restricts the café within Use Class E(b).
22. The proposed café is of a modest scale which would not have an unacceptable impact on highway safety. The reason given for including the condition was given as being in accordance with the appellant's submission and in accordance with Policies S14 and DM18 of the LP. Policy S14 allows for development outside of settlements where they will preserve and where possible support the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural economy. Part b of the policy specifically supports appropriately scaled retail, employment, farm diversification, tourism, and leisure related development.
23. Policy DM18 relates to rural employment development and accepts such developments where they are of an appropriate scale and location. Proposals must not lead to unacceptable impacts on local road networks, have adverse impact on character and appearance and demonstrate that there are insufficient suitable sites to meet the needs of the proposal. In permitting the scheme the proposal was found to meet this policy.
24. The Council accepted the use as a cafe and the compliance of the proposals with Policies S14 and DM18. Even if it considered the use of the café to be ancillary to the other uses, operating as a separate enterprise would not stop it meeting those policies, including in terms of it being in a sustainable location.
25. Whether the café were let, sold, or otherwise disposed of a separate business unit would not materially affect the manner in which it is used and would not result in any additional harm or affect whether or not it meets the requirements of Policy S14 or DM18.
26. Although concerns have been raised that the café could affect other similar nearby uses, it is not for the planning system to manage competition in this way and I have not been made aware of any policy conflict in this regard.
27. The Council states that had the café been proposed as a separate business it would likely have been seen as a tourism use. Whilst a café may appeal to tourists, I do not consider it to be a tourism use. I have not been provided with the details of any policy which the provision of a café would be in conflict with. Even if the café were a tourism use its operation on the ground would not be materially different from what has been approved. It would be open to the public in any event and no specific harms have been identified.

28. In terms of the enforceability of the condition, given that the Council accepts that the café could be used by the public it is not clear how being 'used in conjunction with the approved industrial use of the site' would be controlled.
29. Overall, I find that condition 26 is not enforceable and the restrictions it imposes on the use of the café are not necessary to achieve a sustainable form of development in this location. There would be no conflict with the Local Plan if the permission were granted without the condition.
30. The Council have suggested alternative wording for the condition; however, this largely restricts the café in the same manner as the original wording and therefore I do not find this to be necessary.

Other Matters

31. The site lies within the Stoodleigh Conservation Area (CA). I have taken into account the duty, set out in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The changes to the conditions do not alter the character or appearance of the scheme as it has been approved and therefore the CA would be preserved.

Conclusion

32. I conclude that condition number 6 is reasonable and necessary in its current form and insufficient evidence has been provided to clearly demonstrate that the proposed development cannot connect to the foul sewer as required by Policy DM1 of the LP and the PPG. For these reasons, the condition should remain. However, condition 26 is not required to make the development acceptable and therefore does not meet the tests of being enforceable, reasonable, or necessary as set out in paragraph 57 of the Framework. Therefore, the appeal is allowed by deleting condition 26 as set out in the decision paragraph above.

H Faulkner

INSPECTOR