



Appeal Decision

Site visit made on 2 December 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

Appeal Ref: APP/X1118/W/25/3372916

Rectory Lane, Road from Barton Cross to Instow Cp School, Instow EX39 4LZ

- 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 Andrew Woollacott of Christie Devon Estate Trust against the decision of North Devon District Council.
 - The application Ref is 79003.
 - The development proposed is outline application for the erection of 9 dwellings with all matters except access reserved.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Andrew Woollacott of Christie Devon Estate Trust against North Devon District Council. This application is the subject of a separate decision.

Procedural Matters

3. The appellant has provided additional information relating to biodiversity that was not before the Council when it made its decision. In an attempt to address technical matters, the updated biodiversity net gain report does not fundamentally alter the scheme. The Council has had an opportunity to comment on the updated report. Therefore, in accepting this late information, I am satisfied unlawful procedural unfairness would be avoided for those involved in the appeal.
4. The application was made in outline form with all matters other than access reserved for later consideration and I have assessed the appeal on this basis. Detailed plans have been produced showing a layout of a scheme for 9 dwellings with internal access roads, and landscaping. However, given what has been applied for, these are merely indicative.

Main Issues

5. The main issues are:
 - whether the site is in a suitable location having regard to the provisions of local policy;
 - the effect of the development on the character and appearance of the area, and
 - whether the proposal would make appropriate provision for biodiversity net gain.

Reasons

Location

6. Policy ST01 of the North Devon and Torridge Local Plan (LP) provides overarching support for sustainable development that accords with policies in the LP. LP Policy ST07 sets out the Council's development strategy for the rural area, which focuses on local centres, including Instow. Here, development will be supported in accordance with the local spatial strategy to enhance sustainability and to enable wider than local needs to be met.
7. The local spatial strategy is set out in LP Policy INS, where a minimum provision of 38 dwellings will be delivered through extant permissions and several small allocations. Amongst other things, the policy also seeks to maintain the character of the village by delivering appropriately located development. The supporting text to the policy notes that outside the development boundary, residential development will only be supported on an exceptional basis.
8. The countryside is defined in the LP as being land beyond such local centres, and this is where development is limited to meet local economic and social needs, rural building reuse and that necessarily restricted to a countryside location. As the appeal site is outside the settlement boundary of Instow, it is in the countryside for the purposes of the LP. There is little to show that LP Policy ST18 would apply in such locations, and in its supporting text it is highlighted that exceptional land release around defined settlements is enabled in line with the requirements of LP Policy ST19.
9. This policy requires a robust demonstration that an element of market housing is required to enable the delivery of the proposed affordable housing. While 3 of the 9 dwellings would be secured for affordable housing, the scheme is not advanced as an exception development and no justification is put forward in respect of the market homes. In that context, the thresholds for affordable housing provision set out in paragraph 65 of the National Planning Policy Framework (the Framework) are noted.
10. However, rural exception sites are treated differently, and the Framework also explains that these should provide affordable housing to meet identified local needs. Additionally, its reference to the opportunity to consider whether some market housing on these sites would help facilitate this is consistent with LP Policy ST19. As such, there would be conflict with this and policies INS, and ST07. There would also be conflict with the Framework in this regard.
11. The Council identifies that the appeal site as being within the Undeveloped Coast as it is outside a defined settlement. Although this may not be clearly defined on a proposals map, there is little evidence it is not within this designation. LP Policy ST09 is primarily concerned with the preservation and enhancement of North Devon's coastline and estuary. As such, the effect of the proposal on this area will be looked at later. Even so, part of the policy support for development is based on it being required because it cannot be reasonably located outside the designation.
12. The arguments put forward in respect of the various sustainability benefits of the proposal such as the good access to local services and facilities, as well as the provision of an additional footpath and a mix of housing are acknowledged. That said, to achieve coastal protection within the overall development strategy of the

LP, it is conceivable that parts of the district outside the Undeveloped Coast could offer similar or even better locational benefits, when compared with the appeal site and this proposal. In the absence of any convincing evidence to the contrary, there would be conflict with this part of LP Policy ST09.

13. For the reasons given, I conclude on this main issue that the site is not in a suitable location having regard to the provisions of local policy. As such, there would be conflict with LP policies INS, ST01, ST07, and ST19.

Character and appearance

14. The appeal site comprises the lower section of a large agricultural field on the edge of a relatively close-knit satellite cluster of development that forms part of Instow. There is a steep and narrow characterful lane that dissects the settlement, and it is at its lower end where the access is proposed. To facilitate this and a footpath, a large section of banked hedgerow would need to be altered. While replacements could be secured using a planning condition, my observations were that a section of the rather quaint field bound lane would be somewhat urbanised as a result.
15. Despite its proximity to a busy road and nearby settlements, the site remains an integral part of the locally distinctive farmed landscape, characterised by a rich mosaic of fields. This strong rural character is synonymous with the positive features of its associated landscape character area. In addition, the surrounding area's coastal setting is expansive, and although levels of tranquillity are reduced by the presence of the road, the appeal site's unspoilt qualities maintain close physical and visual ties with the Undeveloped Coast which is a finite and valued resource.
16. There are groups of houses on the far side of a busy intervening road, though having paid regard to the appellant's landscape and visual impact assessment (LVIA)¹, the farmed rural landscape qualities of the appeal site provide a distinct natural separation between the settlements of Instow and Yelland. Even with the line of existing trees or further landscaping, a lengthy ribbon of housing along this frontage would be notably prominent and would significantly erode the small gap between settlements. The unspoiled character of this part of the Undeveloped Coast would be harmfully disturbed as a consequence.
17. Views of the proposal would be most noticeable from the immediate surrounding area. When walking along the frontage footpath, the sense of a merging of settlements would be most noticeable. Moreover, the viewpoint photos in the LVIA indicate that even at some distance, development at the appeal site would be likely to blur the lines between the urban and rural landscape.
18. For the reasons given, I conclude on this main issue that the development would have a harmful effect on the character and appearance of the area. As such, there would be conflict with LP policies ST04, ST09, DM04, and DM08A which, collectively in this respect, and amongst other things, aim to protect undisturbed landscapes, reinforcing key characteristics and special qualities of an area.

¹ Dated March 2024

Biodiversity

19. The relevant primary legislation for the statutory framework for biodiversity net gain (BNG) is principally set out under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990. Under the statutory framework for BNG, every grant of planning permission is deemed to have been granted, unless exempted, subject to the condition that the biodiversity gain objective is met.
20. The effect of paragraph 13 of Schedule 7A is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition”) that development may not begin unless:
 - (a) A Biodiversity Gain Plan has been submitted to the planning authority, and
 - (b) The planning authority has approved the plan.
21. The Council’s concerns are twofold. Firstly, that the biodiversity baseline submitted with the original application did not cover a Watercourse Metric in respect of wet ditches. Since the Council made its decision, the revised BNG report² identifies these ditches as being in a poor condition, which could be enhanced to a moderate state. In the absence of any substantive evidence to the contrary, this aspect of the BNG objective would be capable of being discharged.
22. Secondly, the Council considers that there is a lack of information justifying why the BNG hierarchy of prioritising on-site over off-site gains has not been followed. Within the officer report, it is also queried why the proposed off-site enhancements need to be so far away from the appeal site, though it is conceivable this matter could be dealt with as part of a BNG plan.
23. However, while various gains could be achieved on-site in respect of hedgerows and the watercourse, there would be substantial habitat losses. Although these losses could be mitigated against by the provision of some on-site interventions, the BNG report provides little explanation as to why so much is necessary off-site. Accordingly, and in this respect, the deviation from the BNG hierarchy has not been adequately justified to the extent I can be confident the condition can be discharged.
24. Even if I were to take the opposing view, it would be necessary to secure off-site BNG for at least 30 years. The appellant relies on an email conversation held with the Council’s Sustainability Officer post decision as confirmation from the Council that BNG can be secured via a condition. This was on the basis that development was not considered to be ‘significant’. Firstly, I do not consider this to be the position of the Council. Secondly, having referred to the Planning Practice Guidance (PPG), it is of particular note that ‘significant’ enhancements relate to onsite, rather than off-site gains. In any event, the PPG explains that planning obligations are also required to register sites for offsite gains.
25. In that context, it is explicitly stated twice in the appellant’s BNG report that the offsite land will need to be secured through a S106 agreement and be registered on the Natural England (NE) Register. However, no such agreement or NE registration accompanies this appeal. Therefore, in their absence, it has not been

² Redstone Ecology September 2025

convincingly demonstrated that the planning conditions agreed by the parties would pass the tests of enforceability or reasonableness set out in the Framework.

26. Given the aforementioned uncertainties in respect of BNG, there would also be conflict with LP Policy DM08 as adverse impacts are required to be adequately mitigated. This policy is consistent with paragraph 193 of the Framework, which says, in part, that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
27. Drawing these matters together, I conclude on this main issue that the application fails to make appropriate provision for biodiversity net gains. This is contrary to the requirements of: LP policies DM08 and ST14 which say, in part, that development should enable net gains by designing in biodiversity features and enhancements; Schedule 7A of the Town and Country Planning Act 1990, and with paragraph 187 of the Framework, insofar as the requirement for decisions to contribute to and enhance the natural and local environment by providing at least a 10% net gain for biodiversity.

Other Matters

28. While positioned outside the settlement boundary, the appeal site is next to a bus stop with regular services to other settlements. There is a nearby primary school, though intermittent pavements and a steep hill may not always encourage pedestrian access. Additionally, there are pubs, a convenience store, and some services in the general vicinity of the appeal site. Overall, the site is well located on the edge of a local centre which weighs in its favour.
29. The signed and dated planning obligation would secure contributions towards open space and education, which would be directly related to the development. It would also enable 3 affordable homes subject to a scheme that would require agreement with the Council.
30. There are some grade II listed buildings in the wider vicinity of the appeal site. As such, there is a statutory duty to pay special regard to the desirability of preserving their setting. These are however some distance from the appeal site and on raised ground behind. It is conceivable that a well landscaped scheme with low roof profiling could be set into the slope to adequately avoid harm to their setting. Accordingly, I am satisfied the proposal meets the requirements set out in s.66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (The Act).
31. My attention has been drawn to some appeal decisions in the broader area³ where comparisons have been made in respect of the effect of developments on the Undeveloped Coast and the application of a planning balance. These decisions are however of different scales and are not in the same location as the appeal site. They are not directly comparable, and, in any case, I have assessed this scheme on its own merits.

³ APP/W1145/W/21/3283161 & APP/W1145/W/25/3359853

Planning Balance and Conclusion

32. As set out above, I have identified there to be harm in respect of the appeal site's location, the effect on the character and appearance of the area, including the Undeveloped Coast, and biodiversity.
33. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, where there is a current supply of 4.6 years. Paragraph 11 (d) of the Framework indicates that where the required supply cannot be demonstrated, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. In light of this, LP Policy ST21 sets trigger points for local plan reviews. Under some circumstances it allows for developments outside settlement boundaries, though proposals must also accord with other policies in the LP. As I have identified conflict with a range of LP policies, the scheme could not comply with ST21.
35. The weight that can be given to the Council's housing policies contained within INS, ST07, and ST19 is reduced by the housing land supply position. That said, the degree of consistency LP Policy ST19 has with the Framework's approach to exception sites means it can still be given some weight. I do not agree that the policy objective of ST09 relates to housing, as it is principally concerned with the preservation and enhancement of the North Devon coast. Therefore, significant weight can be afforded to this policy as a mechanism to ensure the protection of the Undeveloped Coast area. For similar reasons, the identified landscape protection policies set out in ST04, DM04, and DM08A also attract great weight. They are consistent with paragraph 187 of the Framework.
36. The scheme would provide 9 homes in a sustainable location with good access to a range of services and facilities. However, any such social benefits are tempered by the fact that the dwellings would make a very modest contribution to addressing the slight housing shortfall. To secure 3 of these as affordable properties is nevertheless a public benefit that I give considerable weight to. Additionally, the scheme would bring some limited economic benefits to the construction industry and thereafter through additional consumer spending in the local economy.
37. Some planning conditions and financial contributions would help mitigate against the various impacts of the proposal, though these would be of neutral weight.
38. Against these benefits I need to balance the adverse impacts. The need to deliver sustainable patterns of growth is an important consideration and one which is embedded in the Framework. The harm arising from the impacts on the character and appearance of the area, together with uncertainties over biodiversity net gain would run contrary to the environmental objectives of sustainable development. Accordingly, I consider that these adverse impacts would significantly and demonstrably outweigh the benefits of the scheme. As such, the proposal would not benefit from the presumption in favour of sustainable development set out within Framework paragraph 11.
39. For the reasons given, the appeal is dismissed.

J Hills

INSPECTOR