



Appeal Decision

Site Visit made on 15 April 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Appeal Ref: APP/X1118/W/21/3266917

Horseshoe Barn, Withy Down, Lower Loxhore, Barnstaple EX31 4SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Challacombe against the decision of North Devon District Council.
 - The application Ref 71568, dated 20 May 2020, was refused by notice dated 22 September 2020.
 - The development proposed is a change of use of part of the applicant's holding for use by tents, as part of a small tourism enterprise.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Paul Challacombe against North Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in my heading comes from the application form. However, the appellant has confirmed that the proposal is for a single unit of tented accommodation. The Council considered the proposal on this basis and so have I.

Main Issues

4. The main issues are:
 - (i) Whether the site is in an appropriate location, with regard to development plan policies concerning tourism accommodation;
 - (ii) The effect of the development on the character and appearance of the area;
 - (iii) The effect of the development on the settings of listed buildings; and
 - (iv) The effect of the development on highway safety.

Reasons

Location

5. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP) sets out a spatial development strategy for Northern Devon's rural area. The Policy sets out that at Rural Settlements, development will be enabled to meet locally

generated needs and in the countryside, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse, and development which is necessarily restricted to a countryside location. The Council has confirmed that camping facilities can in some cases be appropriate rural development.

6. LP Policy DM18 relates specifically to tourism accommodation. It indicates that outside various defined settlements, which do not include Lower Loxhore, the development of new and expansion or rationalisation of existing tourism accommodation would be supported provided it meets one of three locational criteria, and all of a number of other criteria relating to a proposal's impact.
7. The first locational criterion is that the proposal should be related directly to and compatible in scale with an existing tourism, visitor or leisure attraction. The appellant contends that there is existing tourism accommodation at the site. Evidence from a neighbouring resident indicates that a previous owner let Horseshoe Barn for several summer seasons while staying in a mobile home in the garden. There is not, however, any particular evidence that this has occurred in recent years. An advert for the property on a well-known booking platform is not evidence of existing or future use without corroborating evidence of historic occupancy, or future booking opportunities or commitments.
8. It is also stated that permitted development rights could enable the use of the site for a campsite for up to 56 days per year. However, there is no substantive evidence of any historic use of the site in this way. I, therefore, find that the proposal would not be related to an existing tourism, visitor or leisure attraction.
9. The second criterion relates to the reuse of existing buildings, which is not proposed, and the third permits accommodation where it improves facilities for or diversifies the range or improves the quality of existing tourism accommodation. I have already found that there is no existing accommodation at the site.
10. The appellant contends that the third criterion must be capable of reference to existing accommodation beyond the site otherwise the policy at large could not support the new accommodation that it states it would allow. The policy itself is not explicit and I am unsure of the status of frequently asked questions to the development plan which purport to provide clarification. Nevertheless, the first two criteria would allow new accommodation where there was none currently, so there is no inherent contradiction in applying the third criterion to the site only. In any case, there is no substantive evidence that the proposal would diversify or improve the quality of accommodation on offer in the area generally. Therefore, I find that the third criterion does not support the proposal.
11. Overall, then, Policy DM18 does not lend support to the proposal. Nor does LP Policy ST13 which gives support to high quality tourism development that promotes a year round industry: While the proposal could extend the season permitted under permitted development rights, there is no substantive evidence as to how tented accommodation would be suitable year round accommodation.

12. The policies of the development plan must be read as a whole. Even if I were to find that there was no specific conflict with LP Policy ST07, I have identified conflict with those other policies specifically relating to tourism development. Therefore, I find that the development plan indicates that the site would not be a suitable location for the proposal.

Character and appearance

13. The site is at the edge of the settlement of Lower Loxhore. The surrounding landscape is characterised by steeply rolling hills and parts of the site command views around the immediate valley landscape. As such, it may be possible to see back to the site from some mid-distanced locations, but the Council has not identified any particularly sensitive viewpoints.
14. The site is surrounded by trees and hedgerows. Further trees and hedgerows appear to have recently been planted at the site, which could be secured through planning conditions. Even if the single tent were to be sited on the highest, most exposed part of the site, it is likely to be seen against or behind a backdrop of new and existing landscaping, so would not be prominent.
15. The Council is concerned that there could be a spread of domestic paraphernalia around the site, although this is unlikely to be significant in scale or amount in connection with a single unit of tented accommodation, even though the red-line appeal site is large. I also see no particular reason why conditions could not be used to prevent the introduction of children's play equipment and the like into the field, but as the site is not particularly prominent this would do little harm in any case.
16. With regard to these matters and the limited scale of development proposed, I find that no harm to the character and appearance of the area would arise. There would, therefore, be no conflict with those parts of LP Policies ST14, DM04, DM08A, DM14 or (notwithstanding my earlier findings) the specific part of DM18 that seek to respond and reinforce key characteristics of the area, be appropriate and sympathetic to landscape features, and protect local landscape character.

Listed Buildings

17. The site is close to Horseshoe Barn, Hammonds Farm and Bales Farm. Their significance appears to be as vernacular farm buildings and dwellings, which demonstrate historic uses of the surrounding area. Their settings are principally derived from their arrangement as a collection of farm buildings, sited relatively close together along a rural lane, within an agricultural landscape.
18. All of these listed buildings are sited on lower ground than the appeal site, separated by a field and strong tree-lined boundary. The site is, therefore, visually separated from the heritage assets. While the setting of a heritage asset can go beyond visual association and the significance of the listed buildings is partly derived from the surrounding agricultural landscape, there is no substantive evidence that the appeal site plays an important role in understanding the significance of these buildings.
19. Although the character of the appeal site would change, the listed buildings would still principally be seen in the context of a farmed landscape. I, therefore, find that the settings of the nearby listed buildings would not be

harmed and there would be no conflict with LP Policy DM07 which seeks to ensure the conservation of heritage assets.

Highway safety

20. The site is accessed by a network of rural lanes. The track to the site is also a narrow public byway, linking to other rights of way and has a poorly aligned junction with the public highway. Nevertheless, these routes already serve a number of dwellings and other land uses and, despite some local concern, there is no particular evidence of a highway safety problem. Given the very limited scale of development proposed, the traffic associated with visitors to the site and any employment, should it go beyond those already resident at the site, would be small.
21. I, therefore, find that the alleged harm to highway safety has not been substantiated. There would be no conflict with the aims of LP Policy DM05 which seeks to safeguard highway safety and protect public rights of way. Nor would there be any conflict with those aims of LP Policy DM14 that requires the scale of employment to be appropriate to the accessibility of the site and standard of the highway network.

Other Matters

22. The Council has referred to possible effects on biodiversity and ancient woodland. However, while the site may be adjacent to an area of ancient woodland there is no particular evidence as to how harm would arise. Nor do I have any reason to find that planning conditions could not be used to secure biodiversity enhancement on this large, rural, hedge-lined site.
23. The proposal would bring some economic benefit to the local area, with increased visitor spend in tourism and leisure related industries. However, given the small scale of the development this is only of limited weight. The proposal would also provide economic benefit to the appellant, but as a personal benefit that is also of limited weight.
24. It has been said that proposal would help to diversify the use of land and may help to support the appellant's long-term forestry project. However, I have no substantive evidence regarding agricultural or forestry projects at the site or how these would be particularly supported by the proposal. Therefore, this is also of limited weight in my decision.
25. The appellant has made considerable reference to camping opportunities that could be provided under permitted development rights. However, while this would allow similar activities at the site on a larger scale, it would be for a limited period of time each year and would not establish a permanent change of use of the land.

Planning balance and Conclusion

26. I have found that there would be no harm to the character and appearance of the area, setting of heritage assets, highway safety or biodiversity. Accordingly, there would be no conflict with a number of development plan policies, including the detailed impact related criteria of LP Policy DM18. However, this lack of harm is neutral in the planning balance and there would be conflict with LP Policies ST13 and DM18 in terms of the type and location of

accommodation proposed. This results in a conflict with the development plan considered as a whole.

27. I have attributed limited weight to the benefits of the scheme which is insufficient to indicate a decision otherwise than in accordance with the development plan. As the fallback position relying on permitted development rights would be short term and not establish a permanent change of use of the land, I find that it is not capable of outweighing the conflict with the development plan.

28. I, therefore, conclude that the appeal should be dismissed.

M Bale

INSPECTOR



Costs Decision

Site visit made on 15 April 2021

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2021

Costs application in relation to Appeal Ref: APP/X1118/W/21/3266917 Horseshoe Barn, Withy Down, Lower Loxhore, Barnstaple EX31 4SS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Paul Challacombe for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for a change of use of part of the applicant's holding for use by tents, as part of a small tourism enterprise.
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Decision

1. The application for an award of costs is allowed, in part, in the terms set out below.

Procedural matter

2. The conclusion of the Council's rebuttal to the appellant's application indicated that the appellant had acted unreasonably and that the Council was making an application for an award of costs. The Council has been invited to provide reasons for having made the application outside the timescales set out in Planning Practice Guidance (PPG). No response has been received and I have, therefore, considered this no further.

Reasons

3. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The Council's first reason for refusal was, broadly, concerned with the location of the appeal site and alleged lack of conformity with policies seeking to guide the location of tourism accommodation. Although the Council provided no substantive evidence regarding an alleged conflict Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP), the overall case was substantiated through detailed analysis of Policy DM18 which relates specifically to tourism accommodation. No unreasonable behaviour occurred in this regard, so the application for a full award of costs fails.
5. However, there is little substance to the Council's case in respect of the other 4 reasons for refusal. Harm has been alleged in terms of landscape impact, but this largely appears to be derived from the rural location rather than an objective analysis of the site and its landscape setting. Much has been made of the size of the site relative to the proposal, but there is no substantive evidence as to why some parts of the site would be inappropriate or why a

- smaller area is necessary to avoid harm. While the appellant may have signalled intent to provide details of landscape mitigation and has not done so, there is no clear reason why this would be necessary where no harm would arise, or why it could not be secured by planning condition if deemed necessary.
6. Further harm has been alleged to the setting of heritage assets. The Council indicates that an agricultural appearance of the appeal site would allow the assets to be appreciated in the context of farmed countryside, but given the lack of intervisibility of the assets and sites, I found that such would remain the case even if the development were to proceed. In light of this, the Council have provided no substantive evidence as to how the site forms part of the setting or contributes to the significance of the assets. I note that LP Policy DM07 indicates that a Heritage Statement should be submitted, but that is only necessary where the asset or its setting would be affected.
 7. The third reason for refusal, and part of the second, is based upon an assertion that the private and public roads providing access are unsuitable. I have noted their characteristics in my main decision and I note that the Council were following the advice of the local highway authority. Nevertheless, the reason for refusal and evidence on this matter is little more than a description of the characteristics of the access routes and there is no substantive evidence as to how harm would actually materialise. It is further said that the scale of employment is not appropriate to the accessibility of the site, but there is no clear analysis of what that scale of employment would be to justify those concerns.
 8. In addition to landscape and heritage matters, the fourth reason for refusal is concerned with an alleged lack of information to indicate how the development would avoid harm to biodiversity and ancient woodland. While the site may be adjacent to planted ancient woodland, and the Forestry Commission referred to standing advice, the Council's evidence does not indicate how harm may arise. The Council say they were concerned about the effect on biodiversity as a consequence of the size of the site, but there is no substantive evidence as to how the two matters are related. Nor is there any indication as to why, given the size and characteristics of the site, enhancement could not be secured through the use of planning conditions.
 9. I acknowledge that it is generally for the party seeking permission to provide evidence as to how any harm would be mitigated. If harm is likely, then it may be appropriate to request information from an applicant to allow the Council to satisfy itself that harm would not arise. However, where it has not been substantiated as to how that harm would arise, or would even be likely, it is unreasonable to refuse permission based on a lack of information, even if requested information has not been provided.
 10. The consequence of the approach adopted by the Council in this case has resulted in vague reasons for refusal about the proposal's impact. The reasons for refusal make generalised assertions about harm to various interests, but without objective analysis as to how that would actually arise at this specific site. I, therefore, find that the Council has behaved unreasonably in respect of all but the first reason for refusal.
 11. Unreasonable behaviour has not caused the appellant to incur wasted expense preparing evidence in connection with the first reason for refusal. Nor, as the

appeal could not have been avoided altogether, has unreasonable behaviour caused wasted expense in respect of the administration of the appeal process. However, the appellant has been put to some wasted expense dealing with the other matters that I have described.

12. I, therefore, find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Devon District Council shall pay to Mr Paul Challacombe, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the preparation of evidence in connection reasons for refusal Nos. 2, 3, 4 and 5, such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to North Devon District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

M Bale

INSPECTOR