



Appeal Decision

Site visit made on 15 November 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

Appeal Ref: APP/X1118/W/22/3300911

1 Cross Park, Maytree Cottage, Road From Cross Park To Lower Down Copse, Berryarbor EX34 9SZ

- 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 and Mrs Boxhall against the decision of North Devon District Council.
 - The application Ref 74284, dated 25 October 2021, was refused by notice dated 12 January 2022.
 - The development proposed is the change of use of land to allow siting of 2 shepherd huts for holiday accommodation.
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Decision

1. The appeal is dismissed.

Application for costs

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

Main Issues

3. The main issues of this appeal are:
 - the effect of the proposed access arrangement on highway safety with regard to users of Cross Lane; and
 - whether the location of the proposed development is appropriate, having regard to local and national planning policies in respect of tourism accommodation.

Reasons

Highway safety

4. Comprising two fields, the appeal site is accessed from Cross Lane via Woolhanger's Lane (the access track), an unsurfaced, short, narrow track enclosed on both sides by dense, mature hedgerows and the occasional tree. At the junction of the access track with Cross Lane, visibility in either direction is restricted by these hedgerows, plus the high hedges to both sides of Cross Lane. Although subject to a 30mph speed limit, surfaced and wider than the access track, the width of Cross Lane is not sufficient for two-way traffic and there are no passing points close to the junction.

5. Berrynarbor has a range of services and facilities, including a village shop and post office, public house, bus stops and is on a national cycling route. Although within walking distance and lightly trafficked, access to the village is via the narrow, sloping and unlit Cross Lane. Therefore, the likelihood of guests to use a private car to travel to and from the proposed development during their stay is high.
6. Irrespective of the ability of the local road network to accommodate any additional traffic, the Standing Advice from the Council's Highways Officer specifies that lightly trafficked rural lanes should meet junction visibility requirements derived from the Manual for Streets (2007). In the case of the junction between the access track and Cross Lane, the requirements stipulate that no obstructions above 600mm are permitted within specific visibility splays, throughout the year. The existing hedgerows on either side of the access track exceed this height and therefore restrict the visibility of drivers exiting the track. As a result, and as I experienced during my site visit, drivers need to edge out into Cross Lane before gaining sufficient views in either direction to permit a safe exit. Notwithstanding that vehicles on Cross Lane may be travelling at speeds lower than the speed limit, the hidden nature of the exit means that drivers may have little warning that a vehicle is leaving the access track. Given the narrowness and enclosure of Cross Lane, opportunities for drivers to avoid a collision are limited.
7. I have limited evidence before me demonstrating how the required visibility splays could be achieved at this junction, including substantive information confirming that the appellant has ownership or control of the hedgerows. Whilst a traffic mirror is positioned in the hedge opposite the access track, I observed that this provided limited visibility of Cross Lane towards the left and no additional views to the right. Therefore, I am not persuaded that the existing hedgerows could be cut back sufficiently to provide the required visibility splays at this junction.
8. I conclude that the proposed access arrangement would prejudice the safety of users of Cross Lane, contrary to Policies ST10 and DM05 of the North Devon and Torridge Local Plan 2011-2031 (2018) (the Local Plan). These policies seek to ensure, amongst other provisions, that new development protects the safety of the road network. I also conclude that the proposed development would conflict with paragraph 110(b) of the National Planning Policy Framework which requires all development to provide a safe and suitable access to the site for all users.

Location of development

9. There is no dispute between the main parties that the appeal site is located outside a designated development boundary. Policy ST07 of the Local Plan defines land outside development boundaries as countryside and limits development "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 proposed development comprises tourism accommodation in shepherd huts which would traditionally be associated with the countryside and uncommon features within built up areas. As such, I find that the proposed shepherd huts "constitutes development which is necessarily restricted to a countryside location" irrespective of any assessment of how isolated the site may be.

10. However, in respect of tourism accommodation in countryside locations, Policy DM18 of the Local Plan supports the development of new tourism accommodation in three specific circumstances. As it is not related directly to an existing tourism, visitor or leisure attraction, nor reuses or converts existing buildings, the remaining circumstance is relevant to the proposed development: where it “improves facilities for or diversifies the range or improves the quality of existing tourism accommodation”.
11. The Planning Statement submitted with the planning application includes a map showing the location of other tourism accommodation within the surrounding area, albeit limited detail of the types of facilities is provided. During my site visit, I did observe other tourism accommodation, including camping and touring sites, in the surrounding area. Although the proposed development would provide additional facilities which may appeal to a different customer than those which may be attracted to other local tourism accommodation, this would be of a small scale. Additionally, in the absence of compelling evidence relating to the existing tourism accommodation available, I am not persuaded that the proposed development would attract different customers nor diversify the type of facilities available in the area.
12. Notwithstanding this, Policy DM18 also requires, in all cases, that “the local road network can accommodate the type and scale of traffic to be generated and the safety of public highway users is maintained”. As I have found above that the proposed access arrangement would prejudice the safety of users of Cross Lane, the proposed development would conflict with Policy DM18 in this respect.
13. My attention has been drawn to Policy ST13 of the Local Plan which supports high quality tourism development that promotes a year-round industry. The appellant argues that as tourism is an integral part of the economy, it is necessary to balance this policy against the spatial provisions set out in Policy ST07. However, as I have found that the proposed development accords with an exception to Policy ST07, it is unnecessary for me to undertake such a balance.
14. Although I have found that the proposed tourism accommodation is necessarily restricted to a countryside location and accords with an exception outlined in Policy ST07, I find conflict with Policy DM18. Therefore, I conclude that the proposed development would not accord with the plan led approach to the location of tourism accommodation, set out in the Local Plan.

Other Matters

15. The fact that the Local Plan has not been revised since its adoption and that there are no specific supplementary planning guidance documents relating to tourism developments are not reasons, in themselves, to permit unacceptable development. Regardless, as highlighted by the appellant, the Local Plan has been designed to be responsive to a range of economic and social needs.
16. Even if I were to conclude that the proposed development would not harm the character and appearance of the area nor result in any environmental, biodiversity or heritage impact on the setting or special quality of the North Devon Coasts Areas of Outstanding Natural Beauty, these would be neutral factors.

17. Any concerns regarding due process during the processing of the planning application, including the receipt of pre-application advice and a subsequent withdrawal of an earlier application, fall outside of the remit of this decision.
18. My attention has been drawn to other planning applications¹ in the district where development has been approved for glamping pods and a shepherd hut. However, as these applications relate to a farm diversification scheme that did not prejudice the safety of highway users, the circumstances are not directly comparable to the appeal scheme.

Conclusion

19. The proposed development would conflict with the development plan as a whole and there are no material considerations in this case which suggest a decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

Juliet Rogers

INSPECTOR

¹ Application Refs 70814 and 75344



Costs Decision

Site visit made on 15 November 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2022

Costs application in relation to Appeal Ref: APP/X1118/W/22/3300911 1 Cross Park, Maytree Cottage, Road From Cross Park To Lower Down Copse, Berrynarbor EX34 9SZ

- 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 and Mrs Boxhall for a full award of costs against North Devon District Council.
 - The appeal was against the change of use of land to allow siting of 2 shepherd huts for holiday accommodation.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG), at paragraph 030, 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.
3. The appellant's application for costs comprises the following claim against the Council for unreasonable behaviour:
 - failing to provide evidence to support their reasons for refusing planning permission or to provide evidence that their interpretation of adopted policy is made on any credible basis.
4. The appellant states that the appeal was unnecessary as the proposed development complies with the development plan and there were other considerations that the Council failed to take into account when reaching its decision.
5. However, on the decision notice, it is complete, precise, specific and relevant to the application, and includes the local and national planning policies the proposed development would conflict with. In the officer report, the Council have set out how the appeal scheme would harm highway safety and that the site is not an appropriate location for tourism accommodation.
6. As I have found that the development meets an exception to Policy ST07 as it "constitutes development which is necessarily restricted to a countryside location" exception, I do not agree with the Council in respect of this policy. However, in the officer report, the Council have demonstrated and substantiated the balance of the appeal scheme against the relevant development plan policies it has undertaken. As such, I do not consider that

the Council has determined the case on its merits, in a similar approach to the balance undertaken on the farm diversification planning applications¹.

7. Having regard to all the evidence before me, I have similar concerns as the Council with the safety of the junction between Cross Lane and the access track and have not been persuaded that the required visibility splays could be accommodated. Additionally, any benefit to the tourism economy through the provision of two shepherd huts, would be small and would not outweigh the harm I have identified.
8. Accordingly, I do not conclude that the Council failed to provide evidence in support of their reasons for refusing planning permission, nor that their interpretation of adopted policy has been made on a credible basis. I have found that the Council had reasonable concerns about the impact of the proposed development and justified its decision. The appeal, therefore, could not have been avoided.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Juliet Rogers

INSPECTOR

¹ Application Refs 70814 and 75344