



Appeal Decision

Site visit made on 21 January 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18th February 2025

Appeal Ref: APP/X1118/W/24/3345727

Millennium Green Car Park, road from Beechfield to The White Hart, Bratton Fleming, Devon EX31 4RE

- 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 Philip Milton against the decision of North Devon District Council.
 - The application Ref is 78384.
 - The development proposed is described in the application as “to replace the temporary village shop with a purpose built Community hub which will include a public house, shop, post office area and living accommodation above. It will be a Passivhaus build with a green roof”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council’s notice of decision, the National Planning Policy Framework (the Framework) was revised on 12 December 2024. The main parties were invited to comment on how the updated Framework might affect the appeal. I have had regard to these comments in my decision.
3. Furthermore, the appeal is made in outline form with all matters reserved for later consideration. I have dealt with it on this basis and have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative.
4. The appellant claims that the Council was late in making its submissions with the appeal. Even so, they have had an opportunity to comment and would therefore not be prejudiced in any way.
5. Since making its decision, the Council has stated that it incorrectly cited policies TRA5 and TRA6 of the North Devon Local Plan in one of its reasons for refusal. It says that it had intended to refer to policies DM05 and DM06 of the North Devon and Torrington Local Plan 2011-2031 (LP). Commentary on these policies is contained within the Officer report. The appellant has also referred to them in their submissions. As such, in taking them into account, I am satisfied there would be no procedural unfairness.

Background and Main Issues

6. Notwithstanding the details set out in the application form and reference to 3 other residential flats, the appellant has, on several occasions, confirmed in the submissions that the proposal would provide one unit of living accommodation for owners/managers. I have dealt with the appeal on that basis. In that context, save for the potential effect on future occupiers of the development, the Council remains

concerned with the effect of the proposal on the living conditions of existing nearby occupants.

7. I therefore consider the main issues to be:

- the effect of the proposed development on the living conditions of nearby residents, with particular regard to noise, odour, and disturbance;
- whether the site is a suitable location for the proposed development having regard to an allocated housing site; and
- the effect of the proposed development on the local highway network.

Reasons

Living conditions

8. There is a small, mobile building shop that the appellant says serves hot food and alcoholic drinks for customers who can choose to consume outside within its lengthy licensed opening hours. Representations indicate the shop closes at 5pm. It is claimed that the existing occupiers are accustomed to the use of the shop with the noise and odours that emit from it. Be that as it may, in order to deliver the intended shop, post office, café, restaurant, public house, and manager's accommodation, the proposal would be likely to be sited in a different location to the current shop and over a far greater footprint. Indeed, this is indicated on the plans and within the appellant's statements. Collectively, the scheme would introduce a significantly greater intensity of uses into the area. As such, although opening hours could be controlled, it would not be comparable with the existing facility.
9. It is suggested that those residing nearby employ good neighbourliness and fairness to allow for the entire village community to have its needs met. While the benefits of a longer-term community facility are not in dispute, this should not be at the expense of the living conditions of existing occupiers. Accordingly, notwithstanding the fact that siting and layout are reserved matters, the nearest neighbour is positioned very near to much of the likely useable space within the appeal site. Any such building and its associated outdoor space positioned so close to this property would have the potential to generate substantial customer or facility noise, general disturbance by persistent comings and goings, and odour from cooking smells for example.
10. In the absence of any compelling evidence to the contrary, it is simply not known whether the scheme could be progressed without significant harm to the living conditions of nearby occupiers. In these circumstances, it would not be reasonable to attempt to deal with this matter by way of an appropriately worded planning condition.
11. For the reasons given, the development would have a harmful effect on the living conditions of nearby residents, with particular regard to noise, odour, and disturbance. As such, there would be conflict with ST22 and DM01 of the LP which, together in this respect, support community services and facilities where new development does not significantly harm the living conditions of neighbouring occupiers. There would also be conflict with paragraph 135 of the Framework, which says, in part, that decisions should ensure developments create places with a high standard of amenity for existing and future users.

The allocation

12. LP Policy BRF01 safeguards land off The Glebe for approximately 25 dwellings to meet local housing needs. Amongst other things, parts (a) and (d) of the policy specifically identify that a vehicular access will be provided via The Glebe with enhanced landscaping along the northern and eastern boundaries. The appeal site falls within this area of land.
13. The appellant says that the appeal proposal will not encroach onto any land required for housing, road, or facilities access. They add that the access and pavements would be retained as planned for the houses, though I have been provided with no evidence of such plans or proposals. Additionally, it is claimed that the access road into the field could have been amended and compromises could have been reached had the Council engaged in discussions.
14. However, the evidence shows that highway standard road widths and pavements needed to access the allocation would take up substantially more space than is indicatively shown and likely to be available to deliver both developments. This, together with the requirement for enhanced landscaping on the northern boundary, would further reduce the amount of land available to deliver site specific principles set out in the policy. This lack of certainty means that it would not be reasonable to attempt to address this matter with a planning condition.
15. Therefore, in the absence of any convincing evidence to the contrary, even though permission has not been shown to be granted at The Glebe, the proposed development would be likely to compromise the plan led delivery of housing in the district.
16. For the reasons given, the site is not a suitable location for the proposed development having regard to an allocated housing site. As such, there would be conflict with LP Policy BRF01. There would also be conflict with chapter 5 of the Framework which says that to significantly boost the supply of homes, it is important that a sufficient amount of land can come forward where it is needed.

Highways

17. The appeal site is well located in respect of its access to the village and public transport provision, with pavements found at the nearby junction. Even so, the Council says that the development would have the potential to generate a lot of traffic from all road users, including delivery vehicles at all times of day and night. While a pub, shop and restaurant could be open for long periods of the day, operating hours could be restricted using an appropriately worded condition. As such, round the clock traffic generation would be very unlikely.
18. Furthermore, given the relatively small scale of the development proposed, it is unlikely that the levels of vehicle, pedestrian, and cycle movements would be significant, particularly when compared with that already generated by the shop and car park at the appeal site. As such, a travel plan, of the type described in paragraph 118 of the Framework would not be necessary.
19. Nevertheless, there is little evidence before me to demonstrate the current capacity of the existing highway network in terms of vehicular movements, parking provision or local pressures. Furthermore, it is not known what effect the proposed uses would have on the highway. This would have been very useful to determine

whether or not any mitigation might be required within or beyond the appeal site area.

20. While certain information could be secured using an appropriately worded condition and through the required detail at reserved matters, in the absence of a detailed transport assessment, I cannot be certain that the proposal would have an acceptable effect on the local highway network. Accordingly, it has not been shown that a safe and suitable access to the site can be achieved for all users, as required by paragraph 115 of the Framework. Further detail in this regard should be provided ahead of granting planning permission.
21. I therefore conclude on this main issue that the development would have a harmful effect on the local highway network. As such, there would be conflict with LP Policy ST22 which says, amongst other things, that development of new or improvements to existing facilities will be supported where it can be accessed without generating unacceptable impacts on the local road network or reducing highway safety.

Other Matters

22. I have paid regard to comments relating to the processing of the application, site history, land ownership, Landkey, and the nearby pub. However, these matters are not determinative to the outcome of this appeal.
23. The appellant notes that the Passivhaus build would be delivered without causing harm to the character and appearance of the area. A lack of conflict with a number of other LP policies relating to matters such as light pollution, waste, biodiversity, and flooding is highlighted by the appellant. These are however not in dispute between the main parties, and I find no reason to disagree with the appellant in this regard. In any event, this would not be a reason in itself to allow unacceptable development or outweigh the harm identified above.

Planning Balance and Conclusion

24. The Council has confirmed that it is unable to demonstrate a 5-year supply of deliverable housing sites, where there is a current supply of 4.86 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.
25. However, the support for communities is important and paragraph 11 d) ii explains that particular regard is paid to key policies for making effective use of land and providing affordable homes. Paragraph 115 of the Framework is one of these key policies, and this prioritises sustainable transport modes. It has not been shown that the scheme could achieve this and there is therefore conflict with this provision of the Framework.
26. Additionally, the proposal could hold back the delivery of a wider housing scheme that would provide affordable homes to meet identified local needs. There would be conflict with a key policy set out in paragraph 66 of the Framework. Moreover, the harm caused to the living conditions of nearby residents would conflict with key policy set out in paragraph 135 of the Framework.

27. The social benefits of housing delivery carry significant weight, although these are tempered by the fact that the scheme would make a very modest contribution to addressing the slight housing shortfall. The proposal would provide a purpose-built hub with a pub, a new shop to assist one that is said to be struggling and would give access to banking within a sustainable location. There would therefore be some limited economic benefits, including to the construction industry and thereafter through additional consumer spending in the local economy.
28. Against these benefits I need to balance the adverse impacts. The need to deliver sustainable communities is an important consideration and one which is embedded in the Framework. The harm arising from the effect of the development on the living conditions of nearby residents, the provision of much needed allocated housing, and the highways network would run contrary to the social objectives of sustainable development. 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.
29. 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.
30. I have concluded above that the proposal conflicts with the development plan, when taken as a whole. 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