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How inspectors differentiate unacceptably remote dwellings from those they approve

23 January 2020 by Mark Wilding and Richard Garlick

The factors that distinguish dwellings that inspectors see as unacceptably remote from those that they approve.



(Pic credit: Alamy/Getty)

In 1964, the US Supreme Court Justice Potter Stewart issued a fabled ruling in an obscenity case, in which he declined to grapple with the definition of what constituted hardcore pornography. Instead, the judge remarked: "I know it when I see it."

One might assume the same approach could be taken to establish the meaning of the word 'isolated'. In fact, planning inspectors and High Court justices have in recent months been required to deal with the issue in much more detail.

The National Planning Policy Framework (NPPF) instructs local authorities to "avoid the development of isolated homes in the countryside", except in cases where specified exceptional circumstances apply. In this context, what it means to be isolated has become a matter of legal dispute. In March 2018, Lord Justice Lindblom ruled on the issue in a Court of Appeal case brought by Braintree District Council.

The district sought to challenge a planning inspector's ruling that permission for two singlestorey dwellings should be granted in the village of Blackmore End. The local authority argued that, while the site was not physically isolated from other dwellings, it should be judged "functionally isolated" from services and facilities. Lindblom disagreed and referred to the Oxford English Dictionary, which defines isolated as "detached or separate from other things or persons; unconnected with anything else; solitary". "Planning policies, whether in the development plan or in the NPPF, ought never to be over-interpreted," he said.

Lindblom concluded that the phrase "isolated homes in the countryside" referred to "a dwelling that is physically separate or remote from a settlement". He also noted that the NPPF tells local authorities that housing should be located "where it will enhance or maintain the vitality of rural communities" and ruled this may be possible on sites that have no, or relatively few, services of their own. Beyond these principles, Lindblom said the question of whether a site is isolated "will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand".

Decision-makers have continued to grapple with the issue. Planning has identified the key factors that have informed planning inspectors' views.

FOUR REASONS GIVEN BY INSPECTORS FOR FINDING SITES NOT TO BE ISOLATED

1. Its proximity to local services will help to support rural vitality In January 2018, a planning inspector granted permission for nine eco homes on the outskirts of Eakring village in Nottinghamshire after finding the proposal "would help to support viable use of the limited services in the village" (DCS no: 200-007-248). The inspector acknowledged that the appeal site lay outside the village but noted: "It is not disputed that the appeal site is within easy walking distance of the village pub and bus stops, and the church and hall are not much further." He said: "The appeal site is not therefore 'far away' from these services, and in the light of [the 2017 High Court judgment on the Braintree case] cannot be regarded as 'isolated.'" The inspector's decision has since been upheld by the High Court.

2. The scheme will provide housing for residents with a local connection The same case highlighted that provision of housing for local people can help make the case that a scheme will contribute to rural vitality (DCS no: 200-007-248). Plans to offer homes for rent to "those with a clear connection to Eakring and neighbouring parishes" for a minimum of 15 years were cited by the inspector. He concluded that "the appeal proposal would contribute to the rural area's economic and social vitality" and would therefore accord with the NPPF.

3. Nearby sites with planning permission have set a precedent. Permission for a dormer bungalow and double garage outside the village of Sadberge in County Durham was granted in June 2019 by an inspector on the basis that the local authority had recently approved plans for 25 dwellings on an adjacent site, which also lay outside development limits (DCS no: 200-008-546). An inspector found that, in granting permission in the earlier case, the council had acknowledged the site "would have appropriate access and is in a fairly sustainable location for schools, shops, employment opportunities and other local facilities and services".

4. A switch from holiday to permanent accommodation can help sustain rural services. In November 2018, a planning inspector lifted a condition stipulating that four residential units in a Devon barn conversion could only be used for holiday lettings (DCS no: 400-020-253). The inspector noted the NPPF's position on avoiding isolated homes in the open countryside and a stated exception for the re-use of redundant agricultural barns, but advised the exception did not apply because the barn was the subject of an established holiday use. Devon Council argued that permanent occupation would put strain on local services and facilities. However, the inspector found "nothing to suggest such services are under pressure or that increased use of them would be anything other than a benefit to their ongoing viability" and concluded the proposal was "in an appropriate location".

FOUR REASONS GIVEN BY INSPECTORS FOR FINDING SITES TO BE ISOLATED

1. Lack of evidence of contributing to the vitality of a local community. Lord Justice Lindblom's Appeal Court verdict on the Braintree appeal stated that isolated sites should be defined as "physically separate or remote from a settlement", adding that the NPPF does not specify a minimum size of settlement or the need for a development boundary to have been fixed in local policy. Nevertheless, inspectors have since found that proximity to other buildings is not enough to prove a site is not isolated. Ruling on plans for more than 250 homes in Hampshire in January 2019 (DCS no: 200-008-222), an inspector acknowledged that the site "contains existing buildings" but found it was "remote from other settlements and villages and surrounded by open countryside" and "would not enhance or maintain the vitality of the local communities". The inspector's ruling that the site should be viewed as isolated was supported by the High Court in December in a judicial review hearing.

2. Poor access to facilities and services. Despite the Braintree ruling, at least one inspector has dismissed an appeal due to a site's lack of access to local facilities (DCS no: 200-007-760), despite its proximity to other buildings. Ruling in July 2018 on plans for 150 homes near Meldreth village in South Cambridgeshire, a planning inspector conceded that a nearby sports club meant the "site is not isolated insofar as it is 'far away from other places, buildings or people'". However, he added that "the closest local facilities... lie within the village of Meldreth", which had itself been identified in the council's core strategy as the least sustainable location in its spatial hierarchy. The inspector said: "New residential development of the scale proposed should not be detached from being part of a viable and vibrant community."

3. Lack of visibility of nearby buildings. An appeal against refusal of permission for a self-build home near the village of Langton Herring in Dorset was dismissed by a planning inspector in September 2018, partly because the nearest building was not visible from the proposed house (DCS no: 400-019-890). While the inspector noted that there were "individual existing buildings dotted around the outskirts of the village", he observed that the closest lay beyond a hedge-lined public right of way "and was not readily visible or otherwise apparent from the appeal site at the time of my visit". Hence the appeal site "strongly feels like an isolated location", he said. Advising that he felt "no sense that the appeal site relates physically to any other buildings", the inspector concluded that "it feels like a tranquil and remote spot in a largely hidden position in the open countryside".

4. Poor walking and cycling access Considering plans for a home next to a water treatment works in a Norfolk village, an inspector cited the poor quality of walking and cycling links to the closest settlements as a factor in his decision to dismiss the appeal (DCS no: 400-023-278). The inspector found a nearby village to be within walking distance, but judged the journey to be an "unpleasant walk", while the cycle ride to Norwich "would deter all but the most confident cyclist". He concluded: "The proposed dwelling would be unsustainably located and it would be isolated."