
Appeal Decision

Hearing held on 10 May 2017

Site visit made on 10 May 2017

by Nigel Harrison BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 June 2017

Appeal Ref: APP/X1118/W/16/3161218
Hayne Barton, Burrington, Devon, EX37 9JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Paul Cullen against North Devon District Council.
 - The application Ref: 60531 is dated 23 December 2015.
 - The development proposed is conversion of barns to two dwellings and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of barns to two dwellings and associated works at Hayne Barton, Burrington, Devon, EX37 9JW in accordance with the terms of the application, Ref: 60531 dated 23 December 2015, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Block Plan; HB01 Rev D (*Barn A Plans*); HB02 Rev C (*Barn A Elevations*); HB03 Rev 0 (*Barn A Sections*); HB10 Rev D (*Barn B Plans*); HB11 Rev A (*Barn B Plans*); HB13 Rev 0 (*Barn B Sections*).
 - 3) Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) (England) Order 1995* (or any Order revoking and re-enacting that Order with or without modification), no development shall be carried out which falls within Classes A, B, C, D, E, F, G and H of Part 1 of Schedule 2 to the Order without the prior written approval of the local planning authority.

Application for Costs

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

Procedural Matters

3. I have taken the description of the proposed development from the Council's decision notice. Although it differs from that given on the application form, I consider it more concisely describes the proposal.
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Main Issues

4. I consider there are three main issues in this case:
- i) Whether the proposed development would preserve the special architectural and historic interest and the significance of the Grade II curtilage listed buildings (Barn A and Barn B) and the setting of the adjacent Grade II listed farmhouse;
 - ii) The principle of converting the barns to residential use having regard to local and national policies concerning the re-use of rural buildings; and
 - iii) Whether or not the development should be made available for affordable housing.

Reasons

5. The proposed scheme is for conversion of the two barns to two open market dwellings. The conversion of Barn A would provide a four bedroom family house together with a garden area to the rear. The existing metal roof would be replaced with a slate roof and the open-fronted section would provide parking as a carport. The proposed conversion of Barn B would also provide a four bedroom house with associated parking and garden area to the rear. Existing metal lean-to structures would be removed and a new slate roof added.
6. The two barns are located to the west and north-west of the Grade II listed farmhouse. Due to their proximity and former functional relationship to the farmhouse, I agree with the Council that they may both be considered as a curtilage buildings within the meaning of Section 5(2) of the Act¹.

The listed building issue

7. The Council has already approved with conditions a corresponding application for listed building consent², and the approved plans match those accompanying the appeal proposal. The delegated officer report for the listed building consent application summarised that *"it is considered that these works can be carried out without substantial harm to the heritage assets and that such works will provide an optimal use that should ensure their long term preservation"*.
8. It follows that the proposed development would preserve the special architectural and historic interest of the curtilage listed buildings and the setting of the farmhouse. Nonetheless, Section 66(1) of the Act sets out the general duty concerning listed buildings which applies when exercising the planning function. It requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features or special architectural or historic interest it possesses. Consequently, notwithstanding the granting of listed building consent, this is a matter which I still need to consider in the context of a Section 78³ planning appeal.
9. Paragraph 132 of the *National Planning Policy Framework* (the Framework) says when considering the impact of a proposal on the significance of a

¹ Planning (Listed Buildings and Conservation Areas) Act 1990

² Ref: 60557 Approved 29 July 2016

³ Section 78 of the Town and Country Planning Act 1990

designated heritage asset, great weight should be given to that asset's conservation. It says significance can be harmed or lost through alteration or destruction of the heritage asset, or development within its setting. Saved LP Policy ENV 17 of the North Devon Local Plan (LP) states that development affecting a listed building will only be permitted where it preserves the architectural or historic interest of the building, its features, and its setting.

10. Much of the significance of the barns derives from their external form, materials and other characteristics, and from retained internal features including the trussed roof structures. The farm complex at Haynes Barton is a significant survival of a typical grouping of 17th century farmhouse and associated barns constructed of local stone, cob and lime render. The barns are now redundant for farming purposes and the Council's Heritage Officer has expressed the view (in connection with the listed building consent application) that they will need appropriate repair work if they are to survive, and that a beneficial use would secure the required investment.
11. Overall, I find no reason to disagree with the Council Heritage Officer's assessment and conclude on this issue that the proposal would preserve the special architectural and historic interest of these curtilage listed buildings and the setting of the listed farmhouse, causing no harm to the significance of these heritage assets. As such, I find no conflict with LP Policy ENV17 and National planning policy in the Framework.

Whether conversion to residential use would be acceptable having regard to local and national policies

12. The development plan currently comprises the saved policies of the *North Devon Local Plan*, adopted in July 2006 (LP). Paragraph 2 of the Framework confirms the statutory position⁴ that applications for planning permission must be determined in accordance with the development plan, unless material considerations dictate otherwise.
13. The Council has referred to two saved LP policies: ECN5 (*Re-Use of Buildings in the Countryside*) and HSG8 (*Affordable Housing in Rural Areas*). Policy ECN5 permits the re-use of buildings in the countryside for a) employment, tourism, recreation or community use, b) a residential conversion subordinate to a business use or occupation by an agricultural worker, or c) a residential conversion which meets an identified housing need in the community. In all cases four other criteria d) –g) need to be satisfied, including that the building is of permanent and substantial construction and capable of conversion without significant reconstruction, and, in the case of a historic building, that the conversion would not damage its character. The Council appears to be fully satisfied that the proposal satisfies criteria d) to g).
14. Although ECN5 does not explicitly set out a sequential approach for preferred end uses; at the request of the Council the appellant has submitted a viability assessment⁵ in respect of a range of alternative uses including offices, workshops and holiday accommodation. This concludes that residential use for open market housing is the only viable option, not least because of the substantial costs involved in the restoration and conversion of these listed buildings. Furthermore, given the proximity of the barns to the farmhouse, I

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004

⁵ Underwood Wright March 2016 and addendum letter dated 28 June 2016

consider that a commercial use is likely to adversely impact on the living conditions of the occupiers of the farmhouse, particularly from the coming and goings of commercial and employees' vehicles. Given the lack of public transport options to reach the site, and the narrow network of lanes in the area, I accept the appellant's argument that the buildings and location have constraints that make a business use less than ideal.

15. For a residential use⁶ to be acceptable under Policy ECN5 it has to meet an identified need in the local community in accordance with criterion c), and should remain available to meet the affordable housing needs of the community, both initially and in the long term. Therefore, any proposal for open market housing would conflict with this part of the policy.
16. However the LP was adopted over 10 years ago and predates the publication of the Framework. In such circumstances paragraph 215 of the Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
17. To promote sustainable development in rural areas, paragraph 55 of the Framework says housing should be located where it will enhance or maintain the vitality of rural communities, but isolated homes in the countryside should be avoided unless there are special circumstances. Significantly, under the second and third bullet points of paragraph 55, development that would represent the optimal viable use of a heritage asset or would represent the re-use of a redundant or disused rural buildings leading to an enhancement of their immediate setting would amount to such special circumstances. There is no requirement in paragraph 55 to consider other matters such as the viability of alternative uses, the site's location, accessibility to services, or the provision of affordable housing.
18. As such I find an inherent conflict between LP Policy ECN5 and the up-to-date National policy position set out in paragraph 55. LP Policy ECN5 cannot therefore be considered to be consistent with the Framework and considerably reduces the weight that I can give it. Given that the appeal proposal represents a high quality and sympathetic scheme that would secure the future of these heritage assets and would lead to an enhancement of the immediate setting of the buildings is an important material consideration of significant weight.
19. My attention has also been drawn to Policy DN27 of the emerging *North Devon and Torridge Local Plan 2011-2031* (NDTLP). In my view this better reflects the Framework's approach and has a more permissive stance to the re-use of rural buildings wherever they are located provided that a number of criteria are satisfied. There is no conflict between the appeal proposal and these criteria. Unlike LP Policy ECN5, there is no restriction on residential use, or for any dwelling converted under the policy to be made available to meet the affordable housing needs of the community.
20. In its statement the Council says little weight should be given to the emerging NDTLP (and Policy DN27) because of its relatively early stage of preparation. The Council also referred to appeal decisions where the Inspector gave the emerging Plan's policies limited weight. However, those decisions were issued prior to the examination sessions and matters have now progressed. The

⁶ Other than a residential conversion which is sub-ordinate to a business use or is for an agricultural or forestry worker

NDTLP was examined in November/December 2016, and has now reached a more advanced stage. At the Hearing Mr Townsend confirmed that no significant further changes are proposed to Policy DM27, and that formal adoption of the Plan may take place later this year, or at the latest by spring 2018. Therefore, in accordance with paragraph 216 of the Framework I give this policy substantial weight.

21. To summarise on this issue, although the proposal conflicts with LP Policy ECN5, the weight I have given to paragraph 55 of the Framework and emerging NDTLP Policy DN27 represent important material considerations, having regard to local and national policies concerning the re-use of rural buildings.

Whether or not the development should be made available for affordable housing

22. The main bone of contention between the parties appears not to be whether residential use is acceptable, but whether or not the proposed dwellings should be provided as affordable housing to meet the local needs of the community. Indeed, at a relatively early stage, the Council appeared to concede that affordable housing provision within the scheme was not viable. The case officer at that time noted that whilst the valuation report demonstrated the non-viability of alternative options, a sequential approach had to be explored before open-market residential use could be considered favourably. At this stage it was suggested to the appellant that he entered into a Section 106 Agreement (which was drawn up in draft form and put forward by the Council as a 'compromise' solution). This did not require the dwellings to be 'affordable', but merely occupied as their main residence by someone who satisfies the local needs occupancy criteria of the Parish (thus allowing occupation by the appellant's daughters). Subject to this proviso the appellant was advised that the application would be approved⁷.
23. The appellant considered the Section 106 Agreement option, being aware that planning permission would have been granted if it was entered into. However, for reasons concerning difficulties obtaining funds to finance the development and the compromise of final sale values, the appellant chose not to follow this route. Although the Council accepts that an Agreement in those terms has no policy foundation, and its position now appears to have altered in the interim, it was nonetheless put to me at the Hearing that this 'compromise' offer still stands. Nonetheless, as no completed Section 106 Agreement is before me, it is not something I can consider in any event.
24. Subsequently, in or around September 2016, on the evidence of the email trail before me, the Council appears to have made its first reference to saved LP Policy HSG8 concerning affordable housing in rural areas. Amongst other matters this policy states that a proposal for affordable housing to meet a local housing need in a rural area will only be permitted where a) the site is within or immediately adjoining the main built up area of the rural settlement; b) there is an established local need which cannot be met in any other way; and c) the number and type of dwellings are the most suitable to meet the identified housing need.
25. I am satisfied that this policy complies with paragraph 54 the Framework which requires local planning authorities to be responsive to local circumstances and

⁷ Email from Jean Watkins Lead Planning Officer 4 August 2016

plan housing development to meet local needs, particularly for affordable housing. However, although I fully accept the Council's aims to promote affordable housing in the rural areas wherever possible, I am not convinced that LP Policy HSG8 is relevant or applicable in this case. The policy wording does not include the phrase 'Rural Exception Site' although the explanatory text explains that such sites will only be released as an exception to normal housing policies applying in rural areas. It refers to the requirement for applicants promoting an exception scheme to seek the advice of the Rural Housing Enabling Officer, and to the need to establish that there is a genuine local need for affordable housing in the locality by undertaking a survey in partnership with the Parish Council.

26. The Council has referred to another appeal decision⁸, saying it confirms that LP Policy HSG8 may be considered as a rural exception policy. However that scheme is significantly different in that it concerns a mixed scheme for four open market and four affordable dwellings on a site where planning permission would not normally be allowed. In contrast the appeal proposal concerns the re-use of rural buildings, where other and different considerations apply. I also share the appellant's concerns that this policy was only drawn to his attention at a late stage in the application process, and only after the Section 106 Agreement issue was not taken up.
27. Nor, in any event, has the appeal proposal been put forward as a scheme for affordable housing. Therefore, in my view, it does not fall within the very specific parameters of the policy. Nor does it satisfy the criteria set out in the policy. Criterion a) requires the site to be within or immediately adjoining the main built-up area of an identified village or rural settlement. However, the appeal site is separated from the closest part of Burrington by a large field, with the main built-up part of the village being further to the north and west. Secondly, in relation to criterion b) it is not established that the local need cannot be met in any other way; or thirdly, in relation to criterion c) that the number, type and size of dwellings proposed are the most suitable to meet the housing needs identified. Indeed, in this regard, the emerging NDTLP identifies housing land for 50 dwellings on three sites on the edge of the village, and each site would provide a proportion of affordable homes.
28. Reference has been made by both parties to a Written Ministerial Statement (WMS) dated November 2014. This states that affordable housing or tariff style contributions for sites of 10 dwellings or less (5 in rural areas) should not be sought, and confirms that the restrictions of the WMS do not apply to Rural Exception Sites. Although the WMS was subject to legal challenge this was ultimately not successful, and the policies in the WMS are Government policy to be read alongside the Framework. However, as I have set out above, the appeal proposal is not a scheme for affordable housing, and Policy HSG8 does not apply. Therefore, the WMS is not directly relevant in this case.
29. Another important consideration is that the Council has, in effect, departed from its own policy by suggesting a 'compromise' solution, whereby occupancy would be restricted to local people, but with no requirement for the dwellings to be 'affordable' to meet an identified local need.
30. Furthermore, the Council appears to have been somewhat inconsistent in applying policies and seeking affordable housing provision in relation to

⁸ Appeal Ref: APP/X1118/S/16/3149800 Steeple Meadow, Kings Nympton

schemes of this nature. For example, I have been referred to an allowed appeal⁹ relating to the conversion of a former agricultural building to residential use in Burrington, where no reference was made in either the decision notice or the Officer's delegated report to any requirement for affordable housing or LP Policy HSG8. Indeed, the reasons for refusal in that case centred on the locational suitability of the site for housing. The Inspector on that occasion also found an inherent conflict between LP Policy ECN5 and the Government's subsequent approach. At the Hearing I asked Mr Townsend whether he was able to draw my attention to other comparable instances where affordable housing was required as part of a rural conversion scheme in the locality, or in the District generally, but he was unable to do so.

31. Furthermore, given the size of the proposed dwellings, and after applying the normal discount, it is unlikely that they would be 'affordable' under any reasonable definition of the term. Accepting this, the Council suggested to the appellant at one stage that the number of residential units be increased to four (two open-market and two affordable dwellings) in an attempt to overcome viability issues. However, no such proposal is before me, and this is not something I can consider in connection with this appeal.
32. Overall, for the reasons given above, I conclude on this issue that there is no justification for the proposed development (either wholly or in part) to be made available as affordable housing.

Other Matters –Five-year housing land supply

33. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development, and relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 14 of the Framework indicates that where relevant policies are out-of-date 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. As at April 2106 the updated Annual Statement showed that the Council had a five-year supply of housing at that time. It was explained at the Hearing that there may now be a slight under-supply, although no up-to-date figures for the North Devon District were available to me. Nonetheless, even if this was the case, and relevant policies for the supply of housing were deemed out-of-date, the provision of two dwellings would not make any significant contribution towards addressing any shortfall.

Overall Planning Balance

35. I have concluded on the first issue that the proposal would preserve the special architectural and historic significance of the Grade II curtilage listed buildings and the setting of the adjacent Grade II listed farmhouse. This factor attracts substantial weight. On the second issue, I have concluded that conversion of the barns to residential use would be acceptable, having regard to local and national policies concerning the re-use of rural buildings. Although there would be conflict with part of saved LP Policy ENC5, this attracts less weight in the overall balance due to its inherent conflict with paragraph 55 of the

⁹ Application Ref: 61051 and Appeal Ref: APP/X1118/W/16/3157442 Barn at Houndhill, Burrington, Devon

Framework. I have also afforded significant weight to the Framework compliant Policy DN27 of the emerging NDTLP. For the reasons explained above I have concluded on the third issue that there is no sound or fully reasoned policy justification for the proposed development to be made available (wholly or in part) as affordable housing.

36. Paragraph 7 identifies a three-stranded definition of sustainable development based on economic, social and environmental factors. In terms of social factors, whilst the impact of two extra dwellings would be modest, the delivery of housing is nonetheless a material consideration in favour of the proposal. There would also be limited economic benefits arising from the conversion and subsequent occupation of the dwellings, and the provision of family housing would represent another social benefit. There would be also be benefit in terms of the environmental dimension in that the proposal would secure the optimal use of these heritage assets and secure their preservation. Furthermore, as I have found that LP Policy ECN5 is out of date, paragraph 14 of the Framework indicates that permission should be granted as any adverse impacts of doing so would not significantly and demonstrably outweigh the benefits, when assessed against Framework's policies taken as a whole.

Conditions

37. The Council has put forward just two conditions, and I have considered these in the light of the advice in the Government's *Planning Practice Guidance* (PPG). In addition to the standard time condition a condition is need to secure compliance with the submitted (revised) plans for the avoidance of doubt and in the interests of proper planning. However, I consider that a condition withdrawing normal permitted development rights for extensions, other alterations to the dwellings, and curtilage buildings is required to protect the special architectural and historic interest of the buildings and the appearance of the surrounding countryside.

Conclusion

38. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Nigel Harrison

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Gower: Agent-Quiet Waters Consultancy

David Stephens: Battens Solicitors

David Martin: Gates Consultants

Paul Cullen: The appellant

Teresa Cullen

Lisa Cullen

Nicola Cullen

Lewis Webster

FOR THE LOCAL PLANNING AUTHORITY:

Graham Townsend: North Devon District Council

INTERESTED PERSONS:

John Short: Local resident

Julia Short: Local resident

DOCUMENTS

- 1) Letter dated 26 April 2017 notifying interested parties of the date and venue for the Hearing
- 2) Appendix A: Correspondence File
- 3) Appendix B: Heritage Building File
- 4) Appendix C: Viability File
- 5) Appeal decision and Council's Statement of Case for the appeal:
APP/X1118/W/16/3157442 Barn at Houndhill, Burrington, Devon
- 6) Delegated report: Ref: 61051: Barn at Houndhill, Burrington, Devon
- 7) Letter from Mr Graham Townsend provided at my request setting out the current position in relation to the emerging North Devon and Torridge Local Plan
- 8) Listed Building Consent for conversion of two barns to two dwellings at Hayne Barton, Burrington, Devon (Ref: 60557)
- 9) Closing remarks on behalf of the appellant
- 10) Costs application and Council response

PLANS

- 1) Policies Map 37: Burrington North Devon and Torridge Local Plan