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# Appeal Decision

Site visit made on 16 August 2017

**by Andy Harwood CMS MSc MRTPI**

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

**Decision date: 07 September 2017**

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**Appeal Ref: APP/U1105/W/17/3172195**

**Ellergarth, Dalditch Lane, Budleigh Salterton EX9 7AH**

- 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 D and A Huish against the decision of East Devon District Council.
  - The application Ref 16/0791/FUL, dated 1 April 2016, was refused by notice dated 27 September 2016.
  - The development proposed is the conversion of an existing barn with extension plus associated works.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The first is the effect of the proposal on the character and appearance of the existing building and the surrounding area. The second is whether there are special circumstances that would justify the conversion and extension of the building to permanent dwelling given the location of the appeal site. The third is the effect of the proposal upon biodiversity in relation to protected habitats.

## Reasons

### *Character and appearance*

3. Ellergarth Barn (the barn) is a 2 storey detached building built into the hillside that rises up to the rear of the building. The barn is within part of the existing garden separated from the rest by a substantial wall. The dwelling to the south is a more modern chalet style building and is separated from the barn by a substantial gap and there is a modern, flat roofed garage in-between.
4. The rising hillside and landscaping dominate the background to the barn and existing dwelling, resulting in the site being secluded from the open countryside to the east. The enclosure of the garden with the walls and landscaping help also to provide a private setting for the building which is not prominent when viewed from the nearby road. The land within this substantial enclosed area is primarily a well maintained lawn.
5. The barn is a simple 2 storey structure which is constructed of a mix of materials and the external elevation is rendered. There are 2 buttresses that have been installed at some time to secure the structure and a thatched roof

which is currently covered with a tarpaulin to protect it. The building is in need of some maintenance and upkeep although I have no evidence that would lead me to suspect that it has been deliberately neglected. The tarpaulin and internal temporary propping indicate an attempt to stem any further decay.

6. The proposal would involve a 2 storey extension that would be diagonally positioned relative to the linear barn, to the east and south of the existing building. This extension containing a kitchen and bedroom would be linked to the barn by a lower 2 storey section which would include the stairway up to the first floor of the original building and the extension. The main part of the extension would be a little lower than the top of the thatched roof and the link would be even lower still. The footprint area of the new parts of the building would appear to be similar to the existing barn although I have not been given comparative area or volume figures. It would be a significant extension. However the new building would appear subservient to the barn given the lower roof and due to the way in which the extension would be angled. There would be no angle of view apparent to me from which the new structure would dominate the old. The use of contrasting materials would help distinguish the new element from the old structure and in my experience timber and natural slate would weather down to a natural, recessive hue. The new part of the proposal would sit comfortably alongside the original building.
7. The design of the extension would respect the special qualities of the existing building, relating well to the context of the site. I consider that the proposal would not have a harmful impact upon the character and appearance of the existing building or the surrounding area. This would comply with Policy D1 of the Local Plan<sup>1</sup> (LP) and would constitute a good design, as required by paragraph 56 of the National Planning Policy Framework (Framework). The proposal including the domestic use of what is already a domestic garden area would conserve the landscape, scenic and natural beauty of the Area of Outstanding Natural Beauty.

### *Special circumstances*

8. The appeal site is located along a rural lane without footways a substantial distance from Knowle. Knowle contains some limited facilities and the appeal site is around 500m according to the appellant from the village. For the purposes of paragraph 55 of the Framework a home in this countryside position should be avoided due to its isolation unless there are special circumstances. A list of examples of such circumstances is set out although that is not exhaustive. Policy D8 of the LP provides the Council's policies for the re-use of rural buildings. This is more detailed and explicit than paragraph 55 of the Framework but is generally consistent with it in approach.
9. The Council has confirmed that the barn warrants retention. The appellant has supplied information about the history of the building which, along with the walled garden and old wagon shed on the south-western boundary of the garden seems to date from before 1727. They are shown on the maps of that date. I am not provided with details of how the Council decides what should constitute a non-designated heritage asset. However the Planning Practice Guidance refers to non-designated heritage assets as, amongst other things, buildings having a degree of significance meriting consideration in planning decisions. Given the age and original form of the barn as well as the Council's

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<sup>1</sup> East Devon Local Plan 2013 to 2031, Adopted 28 January 2016

confirmation that there is merit in retaining the structure, I can accept that it is a non-designated heritage asset.

10. The barn has a simple but, from what I saw in the area, a distinctive, uncommon appearance. As I have indicated in relation to the first main issue, the proposal would not have a harmful impact upon the character and appearance of the building. The proposal would not harm the significance of the building as a non-designated heritage asset.
11. The building is not required for agricultural purposes and the structural information provided indicates that it could be converted as required by LP Policy D8. This location away from services would add to the need to travel by private vehicles although for some facilities this would only be a short drive. I have no evidence that a single household within a modest 2 bedroom dwelling would lead to a substantive increase in travel by car which is the term used within LP Policy D8.
12. I have not been provided with a detailed analysis of the viability of the proposed scheme or any alternatives such as its simple maintenance for ongoing use as a domestic outbuilding. However, I can understand that the nature of the existing barn and the form of its construction including the thatched roof would require substantial work just to maintain it. The evidence about the structure indicates that various parts of the walls require repair. Unless significant effort is made to repair the building it will continue to decay. That will have an adverse impact upon the setting of the building. Providing a new thatched roof would enhance the appearance of the building and its setting. Other repairs would be less obvious but would secure the building, preventing further deterioration. Due to these improvements, I consider that the proposal would be beneficial to the non-designated heritage asset. I give significant weight to these benefits.
13. As I have stated in relation to the first main issue, the proposed extension would be of a significant size. It is not explained by the Council what they would normally consider as being a substantial extension which is one of the limitations within LP Policy D8. No guidance has been referred to. I have to reach my own view and I consider that the significant footprint and volume of the additional extent of building would be substantial. In this way, the proposal does not comply with that part of LP Policy D8. However, given the significant weight that I give to the benefits of the proposal, I do not consider that this should in itself lead to refusal of planning permission. The proposal would not undermine what the policy seeks to achieve.
14. In relation to this main issue, there are special circumstances that would justify the conversion and extension of the building as proposed to permanent dwelling in this location. Although this does not comply with LP Policy D8 which is my starting point, I consider that the harm is outweighed by the significant weight I can give to the benefits of the proposal in relation to the non-designated heritage asset as well as compliance with paragraph 55 of the Framework.

### *Biodiversity*

15. Part of the East Devon Pebblebed Heaths (the heaths) are located to the west of the appeal site. The heaths have been designated as a Special Area of Conservation (SAC) and also as a Special Protection Area (SPA). Parts of the

- heaths are also a Site of Special Scientific Interest (SSSI). The heaths are therefore important for wildlife and are subject to strict protection.
16. The LP at paragraphs 18.45 and 18.46 refer to the heaths' function as a habitat for breeding populations of nightjars and Dartford warblers. It also explains the approach adopted by the Council in consultation with Natural England. Reference is made to disturbance that can occur due to recreational activity including dog walking. The LP goes on to explain that to help preserve the integrity of the heaths specifically on account of the impacts of domestic cats through bird predation, new dwellings will not be allowed within 400m of the heaths. There is no dispute by the appellant that 'as the crow flies' the appeal site is within 400m of the nearest part of the heaths.
17. Government circular 6/2005<sup>2</sup> (the circular), and in particular the flow chart in figure 1, sets out the approach to be taken in considering development proposals that may affect international designations including SACs and SPAs. This is in order to fulfil the requirements of the habitats regulations<sup>3</sup> (which have been updated since the publication of the circular). The proposal is not directly connected with or necessary for site management for nature conservation. I have no evidence in the form of a consultation response from Natural England or a specific assessment to indicate that the proposal will not have a significant effect on the SAC and SPA.
18. The appellant has referred to the Site Mitigation Strategy<sup>4</sup>. This refers to the proximity of the site being a limited factor in terms of the visits to the heaths. The LP is my starting point for decision making which refers to the overall findings of the site mitigation strategy. The submitted extract from the Pebblebed Heaths Conservation Trust website refers to the promotion of responsible recreation but also refers to the complete right of access over the common. There is very little control possible to ensure that additional people visiting, including those living nearby, will not cumulatively have an adverse impact upon the integrity of the heaths. The routes from the appeal site to the nearest parts of the heaths may be around or possibly just over 400m which may affect the likelihood of dog-walkers going across to the heaths. However I must take a precautionary approach. The site is at best in a position that is marginal in terms of potential harm to the heaths. Furthermore, although there is a small stream alongside Dalditch Lane, I have no evidence about cat behaviour. The stream did not appear to me to be a major obstacle. I am not convinced that cats owned by occupants of the proposed dwelling would be unable to reach the heaths. I consider, from the information available, that the proposal is likely to have a significant adverse effect on the heaths.
19. I am required by the circular to consider whether compliance with conditions or other restrictions such as a planning obligation would prevent adverse effects. Although the appellant's design and access statement indicates that a unilateral undertaking would be submitted, I have not been provided with one. Furthermore, I am not made aware of details of specific alternative natural greenspace or strategic access management and monitoring that the appellant could contribute to in order to possibly mitigate for any harm.
20. The appellant has suggested that a planning condition could be imposed to

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<sup>2</sup> Biodiversity and Geological Conservation - statutory obligations and their impact within the planning system

<sup>3</sup> Conservation of Habitats and Species Regulations 2010

<sup>4</sup> South East Devon European Site Mitigation Strategy – by Footprint Ecology, 9 June 2014

prevent the owners of the proposed dwelling from keeping cats. If that could be achieved, it would only overcome some of the potential harm that could be caused to the heaths from this proposal.

21. In terms of whether such a condition would meet the tests for conditions as set out in paragraph 206 of the Framework, another decision has been referred to where a fellow inspector imposed such a condition<sup>5</sup>. I note that the case related to a dwelling that was restricted to holiday use only. It seems unlikely to me that holiday makers would in normal circumstances expect to bring their cats with them and if that was their intention, the owner of the holiday accommodation would have a responsibility for ensuring compliance with the planning condition. Any cats brought on holiday would also normally return with their owners so any breaches would be of short duration. It would be a very different matter to attempt to restrict the occupants of an unrestricted dwelling in the same way. It would be extremely difficult for the Council to monitor cat ownership within the area and even if they could do so in practical terms, it would be extremely difficult to determine which cats were owned by specific residents in the area. I therefore do not consider that such a condition could be adequately enforced and would fail that test for planning conditions.
22. I have taken a precautionary approach in determining this main issue however based upon the evidence available, I cannot be certain that the proposal would not adversely affect the integrity of the heaths. This would conflict with the circular and the habitat regulations. This would also not comply with LP Strategy 47 or the advice within the Framework.

### **Other Matters**

23. The proposal would provide an additional dwelling which would be a useful contribution to the housing stock within the area. This has limited weight based on the information provided. I also have some information about the other decisions that have been referred to nearby. It is not clear whether these have been determined in the way that I have considered this proposal in particular in relation to the implications for the heaths. However, those decisions do not provide a precedent that I have to follow where I consider there could be harm as I have explained in relation to the third main issue.
24. My conclusion on the third main issue outweighs the significant weight that I have given to the benefits of the proposal in relation to the heritage asset, the limited weight I give to the above matters and the lack of harm in relation to the first main issue. On balance the proposal is unacceptable.

### **Conclusion**

25. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

*Andy Harwood*

INSPECTOR

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<sup>5</sup> Appeal Ref: APP/U1105/W/15/3140667