



Appeal Decision

Site visit made on 1 July 2019

by J Evans BA(Hons) AssocRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2019

Appeal Ref: APP/Y1138/W/19/3225869

Commercial Unit, Shute Farm, Road from Shute Cross to All Saints, Shute, Shobrooke EX17 1BP

- 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 Mrs Veronica Ayre against the decision of Mid Devon District Council.
- The application Ref 18/02029/FULL, dated 12 December 2018, was refused by notice dated 14 February 2019.
- The development proposed is described on the application form as the conversion of a redundant engineering workshop into two 3-bedroom unfettered dwellings.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal site has planning permission¹ (the 2017 decision) for the 'conversion of redundant engineering workshop to two 3-bedroom holiday cottages'. From a review of all of the information before me, this permission has as yet to be implemented. Nonetheless, this planning permission represents a fall-back position for the appellant. The appeal development does not significantly deviate from the alterations approved under the 2017 decision, with the exception that a full unfettered residential use is sought. The 2017 decision referred to the use as 'holiday cottages' in its description and contains a condition² limiting occupation to holiday purposes only.
3. A unilateral undertaking (UU) made under Section 106 of the Town and Country Planning Act 1990 (as amended) (the Act), dated 14 March 2019 was submitted by the appellant during the course of the appeal. This UU made provisions for a financial contribution of £2500 towards the provision of public open space facilities in the locality. This is an agreement to which the Council have not been signatories. I sought the views of the Council on the 14 March 2019 UU, as to whether this would address the second grounds for refusal on the decision notice, which refers to a failure to provide for a financial contribution towards the provision of public open space. The Council advised that as the financial contribution would be allocated to the 'replacement of toddler play equipment at Shobrooke parish play area', the UU should make

¹ 17/00747/FUL for the 'conversion of redundant engineering workshop to two 3-bedroom holiday cottages' – conditional decision dated 29th June 2017.

² Condition no 3 reads 'The holiday let units hereby approved shall be occupied for holiday purposes only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up to date register of the names of all occupiers of the holiday let unit, their arrival and departure dates and their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.'

specific reference to this. The appellant was notified of the Council's comments and submitted a revised UU dated 31 July 2019 which makes provisions for a financial contribution of £2500 towards the '*replacement of toddler play equipment at Shobrooke parish play area*'. The agreement has been signed and is before me to consider. The Council have been provided with a copy and have been provided with the opportunity to comment on the 31 July UU, however no further comments have been received.

Main Issues

4. The main issues are whether the development:

- would provide a suitable location for an unfettered dwelling house use having regard to development plan policies, the Framework and any other material considerations; and
- should make provision for public open space.

Reasons

Suitable location

5. The appeal site is situated in a rural location between the small settlements of Shobrooke and Newton St Cyres, amongst a collection of buildings to the west of Shute Farm. The site is enclosed to the east and southern boundaries by a tall hedgerow, a lower hedge enclosure is provided to the boundary to the public highway to the west, the site is accessed via a narrow entrance from the south, which leads from a unmade lane which connects to the public highway at Shute Cross.
6. The appeal building concerns a redundant dual pitched portal framed structure, which it is understood to have originally been constructed for agricultural purposes, but more recently has been used as an engineering workshop. The building is of a simple functional appearance, with two large door openings, exposed blockwork and part rendered elevations, and corrugated profiled sheeting to its upper levels and the roof. There is hardstanding around the building, which has become overgrown as a result of the disuse of the appeal site.
7. Both the appellant and the Council submit that the appeal site is within the countryside for planning purposes. From my review of the information before me and all that I saw during my site visit, I have reached the same conclusion. Policy COR18 of the Mid Devon Core Strategy 2026 (2007) (the CS) strictly controls development outside of settlements defined by Policies COR13 – COR17, to enhance the character, appearance and biodiversity of the countryside, subject to a number of criteria. The appeal development does not meet any of the criteria listed, and therefore conflicts with this policy, however the policies in the CS pre-date those within the National Planning Policy Framework (2019) (the Framework).
8. Paragraph 213 of the Framework explains that due weight should be given to existing policies adopted or made prior to the publication of the Framework, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). Policy COR18 of the CS does not reflect some of the policies in the Framework which relate to rural housing, such as those referred

to in paragraphs 78 and 79, and as such the policy is more restrictive than the Framework. As a consequence, the conflict with policy COR18 carries limited weight in my decision.

9. Notwithstanding the above, policy DM11 of the Mid Devon Local Plan Part 3 – Development Management Policies (2013) (the DMP) supports the conversion of redundant or disused rural buildings in the open countryside which are of a substantial and permanent construction which positively contribute to an area's rural character into other uses, including residential, subject to a number of criteria.
10. There is no dispute that the appeal building is redundant and disused, or that it is of substantial and permanent construction, the appeal development accords with policy DM11 of the DMP in regard of these tests. However, whilst I consider that the appeal building does contain some of the attributes found on farm buildings in the area, due to its functional modern appearance, the ad hoc nature of the external finishes and the large door openings, I do not consider that the appeal building could be described as positively contributing to the area's rural character. The appeal development therefore conflicts with this critical component of policy DM11.
11. Both the appellant and the Council have referred to paragraph 79 of the Framework, which unlike policy DM11 has no requirement for the re-use of buildings to positively contribute to an area's rural character. Paragraph 79 allows for isolated homes in the countryside where the development would enhance its immediate setting.
12. Whilst I am not convinced that the site itself could be described as isolated, even if I did give less weight to policy DM11, and revert to paragraph 79 of the Framework, I do not consider that the appeal development would enhance the its immediate setting, it would therefore conflict with paragraph 79. I have reached this view on the basis that whilst I accept that the appeal development would bring some cohesion to the appearance of the building and would enable the current overgrown and unkept appearance of the site to be tidied up, nonetheless the development itself would have a domesticating character effect and would introduce more typically residential design features to the appeal building and associated domestic activities within the appeal site. The effects of these changes would be appreciated from the adjacent lane. To my mind, these domesticating changes in this rural context, would not result in an enhancement to the immediate setting to the site.
13. I have also had regard to paragraph 78 of the Framework, which promotes housing where it will enhance or maintain the vitality of rural communities. However, the appeal site is located some distance away from the closest communities and the contribution two additional dwelling houses and their occupants would make to the vitality of these communities would be small. Therefore, I find that the proposal would not be supported by paragraph 78 of the Framework.
14. In reaching my conclusions I have taken account of the fall-back position for the appellant as a consequence of the 2017 decision. The appellant submits that this decision has established the principle of two dwelling house uses within the appeal building, and otherwise there is no significant difference in terms of the effects of the development on other planning matters, such as the appearance of the site and surroundings, or on sustainability issues.

15. There is no definition of a dwelling house in the Act. However, in *Gravesham BC v SSE and O'Brien* [1983] JPL 306 it was accepted that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence, and it did not lose that characteristic if it was occupied for only part of the year, or at infrequent intervals, or by a series of different persons.
16. From my review of the plans approved through the 2017 decision, I am satisfied that the development contains the facilities required for private domestic existence and it would not lose these characteristics if it was occupied by a series of different persons. I therefore agree that a dwelling house use is approved at the site. However, in reaching their decision, the Council controlled the occupancy of the accommodation through a holiday use only condition, preventing the use from being occupied as a person's sole or main place of residence. The Council have explained in their statement that the 2017 decision was supported specifically on the basis that it aligned with policy DM24 of the DMP which supports tourism and leisure developments, subject to a number of criteria. This is confirmed in the reasons for the holiday use only condition on the 2017 decision notice. The Council contend that the appeal development which seeks an unfettered dwelling house use, unlike the 2017 decision would not support tourism development, and therefore does not align with policy DM24 of the DMP and would not be supported by other policies in the development plan.
17. From my review of all of the information before me, I agree with the Council on this matter, whilst I have taken account of the fall-back position, it does not materially alter the conclusions I have reached on this main issue, with regard to the conflict that a unrestricted residential use of the appeal development would have with the development plan and material planning considerations. In this regard, whilst I have considered whether a condition could be imposed limiting the occupancy of the accommodation to holiday purposes only, to address my concerns on this matter, having regard to the case put forward by the appellant for a unfettered residential use, I do not consider this would be a reasonable approach in this case.
18. The appellant also suggests that weight should be given to Part 3, Class PA of the General Permitted Development Order 2015 (as amended), which relates to the conversion of light industrial buildings to dwelling houses, where a proposal can only be considered against limited criteria set out within the legislation. However, it is understood that a prior notification application³ for such a proposal was refused by the Council on the basis that the use of the building was not considered to fall within a light industrial use. Therefore, whilst I note the appellant suggestion that future changes of use applications at the site could be brought forward, which in turn could support a future application through the prior notification process, as it stands, no fall-back position is in place. Accordingly, I give this matter, very little weight.
19. To conclude on this main issue, for the reasons I have outlined and having regard to all matters raised, the appeal development would not provide a suitable location for an unfettered dwelling house use. It would not be consistent with the national policies contained within the Framework relating to

³ 18/00153/PNCOU

the location of new housing development and, further, it would be contrary to policy COR18 of the CS and policy DM11 of the DMP.

Provision for public open space

20. Paragraph 56 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
21. The Council have referred me to Policy AL/IN/3 of the Allocations and Infrastructure Development Plan (2011) (The AIDP) and '*The Provision and Funding of Open Space Through Development*' Supplementary Planning Document (2008) (the SPD) which seek to secure financial contributions towards public open space provision.
22. The appellant has submitted a UU the contents of which would appear to address the requirements of policy AL/IN/3. Nonetheless, as I am dismissing the appeal on the basis of the substantive main issue, it is not a consideration of determinative weight in this case.

Other matters

23. The appellant has submitted that the Council cannot demonstrate a five year housing land supply. However, the Council have disputed this point. Nonetheless, even in the event that the Council cannot demonstrate a five year housing land supply, this would not alter my decision with regards to this appeal. The provision of two dwelling houses would not be so significant in housing land supply terms to outweigh the concerns I have highlighted.
24. The appellant has also referred me to paragraph 68 a) of the Framework which in order to promote the development of a good mix of sites requires that local planning authorities should: identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved. However, paragraph 214 of the Framework explains that the policies in the previous Framework published in March 2012 will apply for the purpose of examining plans, where those plans were submitted on or before 24 January 2019. Where such plans are withdrawn or otherwise do not proceed to become part of the development plan, the policies contained in this Framework will apply to any subsequent plan produced for the area concerned. As the development plan for the area pre-dates the 24 January 2019, paragraph 68 a) of the Framework is not of relevance to this appeal.

Conclusion

25. Taking all matters into consideration, I conclude that the appeal should be dismissed.

J Evans

INSPECTOR