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## Appeal Decision

Site visit made on 8 October 2019

**by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 October 2019**

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**Appeal Ref: APP/U1105/W/19/3229191**

**4 Lower Deems, Berry Hill, Street, Branscombe EX12 3BB**

- 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 P Creese against the decision of East Devon District Council.
  - The application Ref 18/2753/FUL, dated 3 December 2018, was refused by notice dated 26 February 2019.
  - The development proposed is described as Construction of single dwelling within garden with an existing on-site double garage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have amended the original description of development to reflect that provided at section E of the appeal form in the interests of accuracy and consistency.
3. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

### Main Issues

4. The main issues are:
  - Whether the proposed development is in a suitable location for housing, with particular reference to the accessibility of services and facilities and to the reliance on motor vehicles; and,
  - The effect of the proposed development on the East Devon Area of Outstanding Natural Beauty (the AONB) and its effect on the setting of nearby listed buildings.

### Reasons

#### *Location of Development*

5. The appeal site is located outside of the Built-up Area Boundary (the BUAB). Strategy 7 of the East Devon Local Plan 2013 – 2031 (the Local Plan) provides that parts of the plan area outside the BUAB and site-specific allocations shown on the Proposals Map are considered to be in the countryside. This Policy seeks to restrict development outside of the BUAB unless it accords with a specific

- Local or Neighbourhood Plan policy which explicitly permits it and where there would be no harm caused to the amenity and environmental qualities of the distinctive landscape in which it is located.
6. The evidence before me indicates that no Neighbourhood Plan has been made in Branscombe and that the proposed development does not accord with any policies which explicitly permit development within the countryside. Consequently, the appeal scheme would conflict with Strategy 7 of the Local Plan in this regard.
  7. Annex 2 of the Framework includes a definition of previously developed land (PDL) and advises that land in 'built-up areas' such as private residential gardens is excluded from the definition. In the Dartford<sup>1</sup> case, it was held that residential gardens that are not in 'built-up areas' are not excluded from the definition. On this basis, the appellant considers the appeal site to constitute PDL. However, in this instance, it is not determinative whether the appeal site is considered PDL or not, because PDL is not referred to under Strategy 7 of the Local Plan as an exception for development within the countryside. Therefore, even if the site is PDL, this would not overcome the conflict with the development plan.
  8. Furthermore, whilst I acknowledge the reference made to Policy D8 of the Local Plan by the appellant in support of the proposal, it is noted that this policy concerns the reuse or conversion of existing buildings in the countryside. The proposal does not include any provision for reuse or conversion of an existing building and, accordingly, Policy D8 of the Local Plan does not apply to the appeal proposal.
  9. Policy TC2 states that new development should be located so as to be accessible by pedestrians, cyclists and public transport with a view to minimising the need to travel by car.
  10. The site is located within a hamlet known as Street, close to the larger settlement of Branscombe. Combined, Street and Branscombe provide only a very limited range of services and community facilities including a school, village hall, church and public houses. However, in terms of services and facilities and by reason of the topography of the land and distances involved, only a public house is within walking distance of the appeal site. It would be necessary for future residents of the proposed dwelling to travel further afield to centres such as Sidmouth, Beer or Seaton to access other day to day services such as shops or medical surgeries.
  11. There is a bus stop located near to the appeal site which provides some services to nearby larger settlements. Whilst I acknowledge that bus trip times to these larger settlements are relatively short, from observations made on my site visit and from the evidence before me, services from this bus stop are somewhat limited and infrequent.
  12. In my view, it is therefore likely that future occupants of the proposed dwelling would be reliant on private motor vehicles in order to access basic services, such as shops, medical facilities or wider transport links. Whilst dependence on private vehicles may be expected in countryside locations, the proposal would only exacerbate this level of reliance. It would contribute to a pattern of

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<sup>1</sup> Dartford BC v SSCLG [2017] EWCA Civ 141

development that would be likely to cause environmental harm as a result of increased car journeys and hence carbon emissions.

13. Whilst I acknowledge that the personal circumstances of the appellant suggest that the number of vehicle trips taken over long distance would be reduced, these circumstances are applicable only to the appellant. In this regard, the development would be permanent, and the personal circumstances of future residents may not always be the same. This considerably limits the weight I have attached to these circumstances in the determination of this appeal.
14. Furthermore, the availability of online food shopping deliveries would be unlikely to provide sufficient mitigation for the poor level of accessibility to a wider range of services which are likely to be required on a day to day basis and, in any event, there is no certainty that future residents would shop online in favour of shopping in-store.
15. I therefore conclude that the location of the development is unsuitable as it would fail to provide satisfactory access to services and facilities by means other than the private motor car. The proposal would therefore conflict with Policy TC2 of the Local Plan and Strategy 5B of the Local Plan insofar as they require development to be located where it will encourage efficient, safe and accessible means of transport with overall low impact on the environment. The appeal scheme would also be contrary to those provisions of the Framework which seek to improve environmental conditions within the area by protecting the countryside from inappropriate development where there would be a reliance on private motor vehicles.

#### *Effect on AONB and Designated Assets*

16. The appeal site is located within the AONB and comprises a private garden and garage previously used in association with the adjacent dwelling. The garden area is arranged as a set of distinct terraces which appear to have been cut into the hill which surrounds the site towards the south and to the west.
17. The AONB represents an area of high scenic quality, and the primary purpose of the AONB designation is to conserve and enhance the natural beauty of the area. The Framework states that "great weight should be given to conserving the landscape and scenic beauty of....Areas of Outstanding Natural Beauty...". Strategies 7 and 46 of the Local Plan require, amongst other things, that development respects the character of its setting and, promotes local distinctiveness, and conserves and enhances East Devon's distinctive natural and historic character.
18. The main parties disagree about the level of harm that the proposal would have in this regard, with the appellant maintaining that the proposed scheme would be barely visible within the wider surrounding landscape. Accordingly, I viewed the appeal site from a number of viewpoints as mentioned within the main parties' submissions.
19. In this respect, given the open nature of the surrounding landscape and its topography, the site is visible from public views within the immediate and wider surrounding area, and is highly visible to those making use of the nearby public rights of way which pass by the eastern boundary of the site or which are located on the hillside opposite the site towards the northeast.

20. Whilst I acknowledge that the proposal would provide for some screening at the site, would incorporate a green roof and would be somewhat screened from public views from the nearby footpaths by vegetation, the proposed development would still be visible, especially during winter months when intervening vegetation would not be likely to sufficiently screen the site.
21. In this regard, whilst I conclude that the glazed elevations of the proposed dwelling would be largely hidden from views, the inclusion of the substantial area of glazed roof within the design of the proposed dwelling would sit awkwardly within the overall context of nearby development and would draw the eye. Furthermore, the inclusion of the glazed roof would inevitably result in light spill which would result in the appeal proposal being noticeable within the wider area at night, and would be detrimental to the character and appearance of the surrounding area.
22. For all of these reasons, the proposal would be a visually intrusive form of development that would materially harm the character and qualities of the site at a sensitive interface between existing development and the open landscape. As a result, it would be deleterious to the landscape qualities and the intrinsic character of this part of the AONB. Additional planting and landscaping conditions could not satisfactorily mitigate its harmful impact.
23. The proposal would therefore conflict with Strategies 7 and 46 of the Local Plan and would be contrary to the Framework, which, amongst other things, seek to ensure that local distinctiveness and the character and appearance of the area, including the landscape and scenic beauty of the AONB, is protected. The appeal scheme would also conflict with Policy D1 of the Local Plan which requires that development does not adversely affect important landscape characteristics.
24. The harm I have identified is a matter of particular importance as the site lies within the AONB, and the Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in such locations.
25. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), 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 of special architectural or historic interest.
26. The appeal site is located in close proximity to a group of dwellings which form the historic core of the hamlet near to the public house. I consider that the significance of these listed buildings is mainly derived from their age, traditional appearance including thatched roofs, architectural features and their value as a functional and visual group of buildings within the wider landscape.
27. At present the appeal site predominately comprises private garden land. It lies adjacent to the cluster of listed buildings and helps provide a visual and functional transition between the residential area surrounding the public house and the countryside to the south and west of the site.
28. Whilst the proposed building would be sunk into the hillside to the southwest of the group of listed buildings, the dwelling, especially the glazed roof elements of the proposal, would be visible from the surrounding area as described above.

Furthermore, the proposed dwelling would be visible to those travelling the network of lanes which surround the group of listed buildings. The presence of the proposed dwelling would contrast markedly with the appearance of the group of listed buildings and would draw the eye detracting from the historic character and appearance of the listed buildings and their setting.

29. Consequently, the proposed development would be contrary to the provisions of Section 66 (1) of the Act and those parts of the Framework which seek to conserve and enhance the historic environment. Furthermore, the appeal scheme would conflict with Policies EN9 and D1 of the Local Plan which, amongst other things, seek to protect the significance and setting of heritage assets and requires that development does not adversely affect the distinctive historic character of the area.
30. By reason of the level of screening and vegetation present and due to the surrounding topography, in terms of paragraph 196 of the Framework, I conclude that the proposal would lead to less than substantial harm to the heritage assets and, accordingly, this harm should be weighed against the public benefits of the scheme. I will return to these matters in the planning balance section given below.

### **Other Matters**

31. My attention has been drawn to other development within the area, which the Council has granted planning permission for. I have considered the information which has been provided in this respect, but I am, however, not familiar with all of the circumstances of those other proposals. However, it would appear from the evidence before me that the cited development was for ten dwellings which included provision of affordable housing. Consequently, the proposals are not comparable and, in any event, all applications for planning permission must be determined on their individual merits.
32. I acknowledge that the appellant has longstanding connections to the local community. However, I have seen nothing to suggest that a house elsewhere in the local area which would meet the Council's requirements of the protection of the countryside, would not allow the appellants to maintain those connections. As such, I have attributed limited weight to these personal circumstances in determining this appeal. Having regard to the legitimate and well established planning policy aims to protect the countryside, protect the historic environment and provide development in accessible locations, a refusal of permission would be proportionate and necessary.
33. In the determination of this appeal, I have also considered the details submitted by interested parties. In this instance, however, I have found the proposed scheme is in conflict with the Framework and development plan, and there is no further information put forward by interested parties which outweighs the harm that would be caused by the development.
34. I note the appellant's frustrations with the Council's communication and the way in which it handled the application. However, these matters do not impact on the planning merits of the proposal.

### **Planning Balance and Conclusions**

35. Notwithstanding the above in relation to the main issues, the Framework recognises that new housing can contribute to the vitality of rural communities

by helping to support local services. As such, I accept that an additional household at the appeal site could play a small part in supporting the viability of services within the wider area. Additionally, the appeal scheme would provide for limited employment opportunities during the construction phase.

36. The proposed scheme would also provide some social benefits in terms of a contribution of a dwelling towards local housing supply and the use of previously developed land. However, I find that the above potential benefits would be limited in nature due to the scale of the proposal. Consequently, I conclude that the limited benefits of the appeal scheme would not outweigh the harm as identified above, particularly bearing in mind the degree of protection afforded to AONBs. Furthermore, the less than substantial harm to heritage assets described above, would not be outweighed by the limited benefits of the scheme.
37. For the reasons given above, the appeal should be dismissed.

*A Spencer-Peet*

INSPECTOR