
Appeal Decision

Site visit made on 10 February 2020

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2020.

Appeal Ref: APP/Y1138/W/19/3235029

Land at Little Mounson, Crosse Farm, Cheriton Bishop EX6 6JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr David Powell against the decision of Mid Devon District Council.
 - The application Ref 18/01633/OUT, dated 17 September 2018, was refused by notice dated 13 February 2019.
 - The development proposed is construction of two replacement dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for construction of two replacement dwellings at Land at Little Mounson, Crosse Farm, Cheriton Bishop, EX6 6JD, in accordance with the terms of the application, Ref 18/01633/OUT, dated 17 September 2018, subject to the conditions below.

Preliminary Matters

2. The appeal application was made in outline form with detailed access, scale and siting. Matters of appearance and landscaping have been reserved for future consideration. In view of this, any details pertaining to appearance and landscaping have been treated as purely indicative.
3. The Mid-Devon Local Plan Review (LPR) Main Modifications Consultation period expired during my consideration of the appeal. The parties agree that the LPR is still only capable of attracting limited weight at the present time and I see no reason to reach an alternative view in this regard.

Background

4. In terms of the status of the use of the land, the Council granted a Certificate of Lawful Use (CLU) under Section 191 of the Town and Country Planning Act 1990 (The Act) on 14 March 2006. The CLU, reference 05/02157/CLU, confirmed that the main two caravans on site had been lawfully occupied for residential purposes for a continuous period in excess of ten years and had thus gained immunity from enforcement action, along with the other ancillary residential structures listed in the accompanying schedule. The appeal site therefore benefits from a lawful use for the stationing of two residential caravans and is also previously developed land by virtue of the existence of some buildings ancillary to the residential use of the land.
5. Despite some contradictory assertions by the Council, it has not been properly put to me that the use of land for the stationing of two residential caravans has been abandoned. The evidence also points to a clear intention to resume the

residential use of the site even if that is not current. As such, the dwellings should be considered permanent irrespective of the fact that they take the form of mobile structures. This position is supported by relevant caselaw¹.

6. A later appeal decision² also relevant to the appeal site, dated 14 December 2007, granted a CLU for the replacement of the dated caravans with replacements that fell within the statutory definition of caravans³. Under the terms of the 2007 CLU, the two residential caravans could be replaced with other caravans without the need for permission, potentially in different positions than they presently or historically occupied. Indeed, the appellant acknowledges that one such caravan has been recently replaced following storm damage.

Main Issues

7. The main issues are:

- whether the development accords with the provisions of the relevant planning policies in respect of locating new housing;
- the effect of the proposal on the character and appearance of the area; and
- whether the proposal would make adequate contributions towards public open space.

Location of development

8. The Mid Devon Local Development Framework Core Strategy 2026 (CS) (adopted 2007), through Policies COR1, COR3, COR12 and COR17, set out a spatial development strategy for the district which seeks to focus new development in towns and other defined settlements and villages. In the countryside, development is to be restricted in order to maximise accessibility to services and facilities by means other than the private car. Policy COR9 of the CS also supports the need to reduce travel by car.
9. The appeal site is undisputedly in the countryside. CS Policy COR18 sets out the type of development that may be permissible in the countryside. Replacement dwellings are supportable, although the Policy appears to relate to dwellinghouses that are buildings. Policy DM12 of the Mid Devon Local Plan Part 3 (Development Management Policies) (DMP) (adopted 2013) also relates to replacement dwellings in the countryside. It is clear from the wording of the Policy in its reference to floorspace additions achievable through permitted development rights⁴ that it is only intended to apply to dwellings that are buildings.
10. The proposal does not involve the replacement of dwellinghouses in the countryside. As such, the proposal conflicts with the Development Plan strategy for locating new residential development under CS Policies COR1, COR3, COR9, COR12, COR17 and COR18 and Policy DM12 of the DMP.

¹ Farnham Borough Council v SSETR [2001] EWHC Admin 462 (No. CO/172/2001)

² Ref APP/Y1138/X/07/2040296

³ Under the Caravan Sites and Control Development Act 1960 and the Caravan Sites Act 1968 (as amended)

⁴ Under the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

Character and appearance

11. The existing caravans are arbitrarily sited on this elevated site and are light in colour, meaning that they do not assimilate well with the mostly green backdrop. From the evidence, it appears that the site has been recently cleared and one of the caravans replaced which has resulted in the site being more readily visually harmful in public views. Some of the other ancillary structures are sited higher up against the roadside hedgerow and due to their scale and/or colour are less visually intrusive. Due to the existence of hedgerows and local topography, the roadside glimpses into the site are presently limited and in longer views from Cheriton Bishop, the site forms a relatively minor part of the view.
12. The proposal seeks permission for two dwellings of broadly 3.6 metres above existing ground levels which would be cut into the hillside and which would have monopitch roofs generally orientated to follow the profile of the land. The dwellings would be sited behind an access track along the roadside boundary and the existing hedgerows and trees would be largely retained. The dwellings would be generously scaled when compared to the existing caravans.
13. The appellant's submitted Landscape and Visual Impact Assessment (LVIA) concludes that the proposal would result in limited effects on the Landscape Character Type (LCT) 5A – Inland elevated undulating land⁵. The LVIA also concludes that the proposal would result in negligible visual harm when compared to the current situation. I have also had regard to the alternative fallback position which would potentially involve the replacement of the existing caravans with larger caravans falling under the statutory definition and which could be laid out in a number of different arrangements.
14. Despite the LVIA conclusions, the Council cite that there is a general lack of information on the potential landscape impacts. However, I consider that the fixed access, scale and layout of the proposal are sufficient to adjudge the potential wider landscape and visual impacts in broad terms. The siting and split level nature of the dwellings set within the hillside would make best use of the available space and topography. Whilst comprising a high quality modern form with monopitch roofs which would not be particularly characteristic of buildings found locally, the dwellings would be less 'blocky' than any larger replacement caravans and would present a tidier coherent appearance than the current ramshackle arrangement of caravans and buildings, which many neighbouring residents have referred to as an eyesore. In arriving at this view, I have borne in mind that there would be a minor degree of harm to the rural character of Medland Lane through the improvement of the access thereto, although this would be a likely outcome in either scenario.
15. Given the outline form of the appeal proposal and that the evidence focusses on the comparison between the existing situation and proposal, rather than the potential alternative fallback, I find the LVIA photomontages of limited use in assessing the likely visual impacts. The success of the proposal's visual integration will also depend on the choice of materials, positioning of glazing and comprehensiveness of the landscaping strategy, which are matters reserved for future consideration. However, subject to conditions requiring the removal of the caravans and associated structures, on the basis of the evidence

⁵ Devon Landscape Assessment (2015)

before me, the proposal would lead to improvements to the character, appearance and visual qualities of the area.

16. I accept that any improvements could be undermined if new domestic structures were eventually introduced on to the site. However, this is an aspect that could be controlled by condition and in this particular set of exceptional circumstances, this would justify the removal of permitted development rights. Whilst associated smaller items of domestic paraphernalia could be introduced to the site, this could also occur at any time given its lawful residential use.
17. I note that a CLU was recently granted on 17 January 2020 for the use of land for storage of a caravan, reference 19/01569/CLU. The caravan is situated outside of the appeal site but within land also owned by the appellant. The appellant has also offered to remove this caravan in order to cease the use of the land for this purpose in the event that the appeal is allowed. As I consider that the landscape and visual benefits of the proposal would be negated to an extent by the caravan were it to remain, its removal is also necessary to achieve a holistic beneficial outcome.
18. Considered in the round, and subject to consideration of details as part of a future reserved matters application and through the imposition of appropriate conditions, the proposal would enhance the character and appearance of the area. It would therefore accord with, in particular, CS Policy COR2 and DMP Policy DM2. Together these Policies seek to promote high quality sustainable design, creates attractive places and ensure development positively contributes to local character.

Public Open Space

19. Local Plan Part 2⁶ Policy AL/IN/3 requires that new residential developments contribute to the provision of public open space (POS) through financial contributions payable via a planning obligation under Section 106 of The Act. The amount payable per open market dwelling is £1205. This amount is intended to be put towards a specific local project.
20. However, given my findings in respect of the CLU and the permanence of the residential occupation of the site for two residential units, irrespective of the form of accommodation involved, the proposal does not involve the creation of any net additional residences. As the Policy threshold is not triggered, the proposal cannot be said to be in conflict with Local Plan Part 2 Policy AL/IN/3.

Other Matters

21. The Council has referred to an appeal relating to the replacement of a rural workers caravan with a dwelling which was dismissed⁷. Whilst I have considered the views of my colleague in reaching his decision, I note that that particular residential use was subject of a condition restricting the occupancy which does not apply in the case of the current appeal. Similarly, the appeal decision which examined whether the caravan at The Orchard⁸ was a dwelling or building used as a dwellinghouse is not directly relevant to this case because it is not being disputed that the caravans themselves have become buildings.

⁶ Local Plan Part 2 - Allocations and Infrastructure Development Plan Document (Adopted 2011)

⁷ APP/Y1138/W/19/3228326

⁸ APP/Y1138/X/16/3149507

22. I have had regard to the Council's concern that allowing the appeal would create a precedent for similar proposals in the future. Given the specific circumstances of this case, there is no cogent evidence that they would apply in any other proposals involving lawful caravans.
23. I have taken into account the representations of neighbouring occupiers, the majority of which relate to the historical and more recent use of the site. I have addressed these aspects along with the landscape and visual effects.
24. Neighbouring occupiers have also referred to the inadequacy of Medland Lane to accept the traffic that would be generated and the difficulty of achieving suitable visibility splays. Proposed Site Plan Ref 03 Rev A indicates a marginal improvement to the visibility of an existing gated access onto Medland Lane to achieve visibility splays of 20 metres in each direction, set back 2.4 metres from the carriageway edge upon which the Highways Engineer commented only that standing advice was relevant. As the lawful residential use of the site permits the access and egress of vehicles associated therewith, and the proposal does not seek to materially intensify this use, the proposal would not prejudice highway safety.

Planning balance

25. The Council's five year housing land supply (5YHLS) position as at April 2019 showed a 7.43 year's supply with a 5% buffer, which is not disputed by the appellant. Whilst comments were not sought from the parties, the outcome of the Housing Delivery Test: 2019⁹ did not affect the 5YHLS position.
26. Notwithstanding this, the Council accept that a number of the current housing policies of the Development Plan relevant to this case are out of date. Until such time as the emerging LPR is adopted, the 'tilted balance' outlined in paragraph 11 (d) of the National Planning Policy Framework ('the Framework') is engaged. The tilted balance sets out that planning 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.
27. I have found that no harm would arise in respect of the absence of POS contributions. This matter is therefore neutral in the planning balance. The identified landscape and visual enhancements weigh in favour of the proposal.
28. On the other hand, the proposal would conflict with the Development Plan policies relevant to the location of housing, although I attribute this aspect reduced weight given that the policies are out-of-date. The lawful use of land and fallback position involving the replacement of the lawful residential caravans are significant material considerations that indicates that permission should be granted other than in accordance with the Development Plan.
29. Therefore, in applying the tilted balance, the identified harm does not significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development therefore applies.
30. In conclusion, the material considerations, including the substantial weight to the presumption in favour of sustainable development, lead me to conclude

⁹ Ministry of Housing, Communities and Local Government – Housing Delivery Test: 2019 Measurement (13 Feb 2020)

that a decision should be taken other than in accordance with the Development Plan and permission should be granted.

Conditions

31. I have considered the conditions in light of paragraph 55 of the Framework and the Planning Practice Guidance. I have undertaken some minor editing in the interests of precision and clarity.
32. Conditions are required to secure the approval of the reserved matters. A condition specifying the approved plans is also required in the interests of certainty.
33. I note the archaeological potential of the site in the context of the wider area and consider that an archaeological watching brief should be secured by condition to ensure the preservation and recording of any heritage assets.
34. In the interests of the character and appearance of the area, a condition is required to secure samples of materials prior to their use in the construction of the building. For the same reason, the removal of the existing caravans and structures from the appeal site and adjoining land must be secured by way of condition prior to first occupation of either of the dwellings.
35. Further drainage details are required to ensure that both dwellings are provided with adequate measures to manage surface and foul water.
36. The Council has recommended an additional condition securing matters such as boundary treatments, landscaping, levels and lighting. However, these are adequately covered either in the approved plans or by the reserved matters specific to landscaping. There is no particular evidence as to why specific details should be sought in respect of external lighting, particularly in light of the reserved landscaping matter and ecological enhancement condition.
37. In the interests of highway safety, a condition is required to ensure that adequate access improvements, parking and turning facilities are provided.
38. In the interests of protecting ecological interests, a condition is required to secure appropriate mitigation.
39. I am mindful that the Planning Practice Guidance advises that conditions removing permitted development rights should only be imposed in exceptional circumstances. For the reasons set out above, I have imposed such a condition.

Conclusion

40. For the reasons given above, the appeal is allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

1. Details of the appearance and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application(s) for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, Ref 01 Rev A dated September 2018
 - Block Plan Ref 02 Rev A dated September 2018
 - Existing Site Sections Rev 04 Rev A dated September 2018
 - Proposed Site Sections Rev 05 Rev A dated September 2018
 - Proposed Site Plan Ref 03 Rev A dated September 2018
5. No development shall take place until the developer, or their agents or successors in title, has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme.
6. Prior to occupation of the dwellings hereby approved:
 - all caravans, buildings, structures, equipment and materials brought onto the area of land edged red for the purposes of residential occupation shall be permanently demolished and/or removed from the site;
 - the caravan brought onto the area of land edged blue for the purposes of storage shall be permanently removed and the use of the land for such purposes shall cease.
7. Prior to occupation of the dwellings hereby approved, the means of surface water drainage and foul sewage disposal shall have been provided on the site in accordance with details that shall have been first submitted to and approved in writing by the Local Planning Authority.
8. Prior to occupation of the dwellings hereby approved, the access driveway, turning areas and parking spaces within the car ports shall have been provided in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The access, turning areas and parking spaces shall thereafter be retained for that purpose at all times.
9. Prior to the commencement of any development hereby approved, an ecological construction method statement (ECMS) outlining the delivery of compensation and enhancement measures shall be submitted to and approved in writing by the Local Planning Authority (as advised by the Ecological Impact Assessment by South West Ecology, dated 12 July 2018). The development shall be carried out in full accordance with the approved ECMS.
10. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order

revoking and re-enacting that Order with or without modification), no development of the types referred to in Classes A, B, C and E of Schedule 1, Part 2 relating to extensions, alterations to the dwelling or outbuildings shall be undertaken on the application site.