



Appeal Decision

Site visit made on 1 June 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2020

Appeal Ref: APP/X1118/W/20/3245525

Norway, Road from Shirwell Road to Shirwell Cross, Shirwell EX31 4JN

- 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 Terence Casey against the decision of North Devon District Council.
 - The application Ref 70738, dated 4 November 2019, was refused by notice dated 7 January 2020.
 - The development proposed is erection of one dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of one dwelling at Norway, Road from Shirwell Road to Shirwell Cross, Shirwell, EX31 4JN, in accordance with the terms of the application, Ref 70738, dated 4 November 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. During my site visit, I noted that foundations had been laid and the initial blocks forming the walls of a new building were in situ. The evidence suggests that the footings are similar in size and position to that of a former agricultural building which existed at the site. I return to this matter later in my decision.

Main Issue

3. The main issue is whether the location of the development accords with local policies in terms of accessibility to services and minimising the need to travel.

Reasons

4. The site is on the edge of Shirwell Cross, which is a small settlement close to the village of Shirwell. Under Policy ST07 of the North Devon and Torridge Local Plan 2011 – 2031 (adopted 2018) (Local Plan), Shirwell is defined as a village in which development pursuant to the local spatial strategy may be permitted to meet local needs and growth aspirations. Despite this, neither Shirwell or Shirwell Cross have defined development boundaries, linked or otherwise, under the Local Plan.
5. Local Plan Policy ST23 allows for development in defined settlements without development boundaries only where it is within the principal built form. Alternatively, where a site is at least well related to the main built form of the settlement and provides an affordable housing-focused development, it may be permissible. Echoing the need to build in suitable locations where new housing has ready access to everyday facilities is Local Plan Policy ST10, which specifically seeks to minimise the need to travel by car and enable alternative

sustainable travel options. Similarly, Paragraph 108 of the National Planning Policy Framework (the Framework) seeks to promote sustainable transport modes relative to the type of development and its location.

6. The site is peripheral to the settlement of Shirwell Cross, linked to Shirwell. It is accessed via the same driveway as Norway and is in close proximity thereto. Grouped dwellings on the other side of the road are also close to the appeal site. The settlement's facilities, including the school, are a short distance away, although the nature of the rural road is not particularly conducive to walking for the purposes of journeys to or from school. A bus service also passes by the site which links to nearby Barnstaple.
7. Although it is beyond its principal built form, the site has a visual link with the edge of the settlement. The relationship, in physical and visual terms, is better described as 'well related' to the built form, but as it is not an affordable home, the proposal does not gain support under Local Plan Policy DM23(b).
8. Drawing together this main issue, the site is located on the outskirts of a settlement and is not satisfactorily related to the main built form or for a type of development that is permissible under the current Policies. The proposal therefore conflicts with, in particular, Policies ST07, ST23 and ST10 of the Local Plan and paragraph 108 of the Framework.
9. Notwithstanding that the site is on the outskirts of the principal built form of Shirwell and thus in conflict with the Policies of the Local Plan, for the reasons outlined, I do not consider that the proposal would result in an 'isolated' dwelling under the terms of paragraph 79 of the National Planning Policy Framework (the Framework).

Other Matters

10. From the evidence, the appeal site has a complicated planning history which first saw a prior approval consent¹ under Class Q of the GPDO² given for conversion of an agricultural barn to a dwelling in March 2018. A subsequent application for its replacement with a new dwelling of similar scale was refused in January 2019³. An alternative Class Q application to convert the building was then submitted and approved in May 2019⁴. The submitted scheme is almost identical to those approved plans, but for the fresh construction of the building rather than resulting from a combination of retained and new elements.
11. It is not disputed that between July and August 2019, during the conversion of the building under Ref 66481, the appellant was advised to provide new foundations in order to ensure compliance with building regulations. At this point, with the building having been identified as unsuitable to sustain the planned conversion, the works involved would have gone beyond that which were envisaged and would not have benefitted from the Class Q approval.
12. There is an argument that any structural reports for such prior approval applications should be comprehensive enough to remove any doubt about a building's ability to be converted. That said, with the Council having accepted the submitted reports to grant prior approval on two separate occasions, there

¹ Approval Ref 64482

² Town and Country Planning (General Permitted Development) Order 2015, as amended

³ Refusal Ref 65783

⁴ Approval Ref 66481

is nothing to suggest that the appellant, who had purchased the site with the original Class Q approval in place, acted in anything other than good faith in pursuing the approved conversion scheme.

13. I agree, in a similar manner to my colleague in connection with the Locks and Tracey Down case⁵, that unlawful actions in breach of planning control cannot be condoned. There was an expectation that the approved scheme would yield a dwelling and the appellant will have expended considerable finances in implementing it. As the submitted plans are almost identical to those approved under the second Class Q approval, there has been no material enlargement or repositioning of the building from which the appellant could benefit.
14. In terms of the design and external appearance of the proposal, these matters were considered under the prior approval application and were found to be acceptable. The proposal was not found to be harmful to the setting of any heritage asset for reasons related to its design or external appearance.
15. Nevertheless, the proposed dwelling would share a likeness with a modern, yet simple, rural building, albeit with enhanced finish and design features. Although the scheme would introduce a building on a site that has been temporarily absent of such a structure, it would be similar in scale and form to that which previously existed for a considerable period. Furthermore, notwithstanding its elevated position in a relatively open area, the building has a visual relationship with the nearby farm dwelling and other dwellings within the settlement. As such, the physical and visual impact of the proposal as a whole would be neutral and there would be no conflict with Local Plan Policy ST07.
16. The area of curtilage would be larger than would be permissible under a Class Q conversion. This is a minor improvement that would benefit the future occupants, but would potentially allow for heightened visual harm from the domestication of a greater area. Under the proposals, the area to the west of the barn would have a stone wall reinstated and an orchard planted. The reinstatement of the hedgerow is an essential mitigation measure to limit the impact of the development and extent of curtilage and potential domestication. The planting of trees within the blue line area would provide a denser tree coverage that would assimilate with the adjoining dense tree belt which is a defining feature in this area. It would also provide ecological enhancements.

Heritage asset

17. The appeal site is separated by a public footpath from the edge of Youlston Park which is a sizeable Grade II Registered Park and Garden surrounding a Grade I listed house and associated structures. The issue of harm to the setting did not form a reason for withholding the prior approval consent nor did this issue form a separate reason for refusal, though it features in the Council's planning balance.
18. There is a dense tree belt immediately adjacent to the site which prevents there being any visual relationship or impact on the setting of features within the Registered Park. In terms of the setting of the Registered Park, the established tree belt would be preserved and maintained, continuing to provide a substantial enclosure. Despite the proximity of the proposed building, given the scale, nature and design of the proposal, and that there was previously a

⁵ APP/X1118/V/03/1107987, APP/X1118/C/02/1086601 & 03

building of a similar scale and design in the same position, the impact would be neutral, thus preserving the setting of the Registered Park which is considered to be a 'designated heritage asset' under the terms of the Framework.

Planning balance and conclusion

19. The proposal conflicts with the Development Plan insofar as the site falls outside of the settlement where development is deliberately limited in order to minimise travel and protect the character of the countryside. That the site is only marginally outside of the principal built form, is visually linked thereto and relatively accessible in the context of a rural building are factors that lessen this identified harm and associated Policy conflict.
20. The absence of harm in terms of the wider character and appearance of the area and setting of the designated heritage asset are factors neither weighing for, or against, the proposal.
21. The benefits of providing a dwelling, in social and economic terms, are capable of attracting modest weight in the planning balance. The complex background and particular circumstances of the appellant are also matters to which I have attributed weight.
22. As such, taking into account all relevant factors, the combined weight of the other considerations in this particular case indicate that a decision should be taken other than in strict accordance with the Development Plan.
23. For the reasons set out above, the appeal is allowed.

Conditions

24. In addition to the statutory time limit, the approved plans need to be specified by condition in the interests of certainty.
25. In the interests of highway safety, it is necessary to condition the provision of parking spaces prior to the occupation of the dwelling.
26. In the interests of human health, a condition is needed if in the event that unexpected contamination is found during construction works.
27. In the interests of the character and appearance of the area, a condition requiring the reinstatement of the former western boundary wall and the construction of the new stone wall along the northern boundary with the footpath is necessary for both visual and ecological reasons. A condition requiring tree planting is necessary to secure ecological enhancements.
28. I note the Council's suggested condition seeking to remove permitted development rights under the GPDO. The Planning Practice Guidance suggests that such conditions should only be imposed in exceptional circumstances, which do not appear to be present in this case. As such, I do not consider it necessary to impose such a condition.

Hollie Nicholls

INSPECTOR

SCHEDULE OF 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:
 - Site Layout reference 02A dated 28/11/2017
 - Ground Floor Plan, reference 02 REV A, dated 28/11/2017
 - Elevations, reference 06, dated 28/11/2017
 - Site Location Plan, reference 02B, dated 28/11/2017
 - Bird Box Location dated December 2019
 - Field Planting dated December 2019
- 3) Should any contamination of ground or groundwater be discovered during development of the site, the Local Planning Authority shall be contacted immediately. Site activities within that sub-phase or part thereof, shall be temporarily suspended until such time as a procedure for addressing such contamination is agreed with the Local Planning Authority.
- 4) The dwelling hereby permitted shall not be occupied until the parking facilities for vehicles have been completed in accordance with the approved plans. The parking facilities shall be thereafter retained and used only for their intended purpose.
- 5) The dwelling hereby permitted shall not be occupied until the stone walls along the western boundary and the new stone wall along the northern boundary of the site with the public footpath shall be constructed in accordance with approved plans refs 02A and 02 Rev A. The walls shall thereafter be permanently retained.
- 6) All ecological mitigation, enhancement and planting, seeding or turfing comprised in the approved plans, including on the Bird Box Location and Field Planting plan showing land outlined in blue , shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.