



Appeal Decision

Site visit made on 19 May 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/P1133/W/21/3267189

Stancott Farm, Chudleigh TQ13 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Amanda Sutherland of The Stancott Partnership against Teignbridge District Council.
 - The application Ref 20/00417/FUL, is dated 2 March 2020.
 - The development proposed is erection of five residential dwellings to replace existing agricultural barns and workshop while retaining workshop office for bat roost.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Application for Costs

2. An application for costs made by the appellant against Teignbridge District Council is the subject of a separate decision.

Procedural Matters

3. Prior to the appeal the description of development was revised in order to reflect the retention of a workshop office, currently housed within a workshop storage area, as a bat roost. I have used the revised description of development in the banner heading above.
4. After the appeal started, the appellant provided revised plans Refs 2020-MS-ED-XX-00-DR-A-PL-2010 C, 2020-MS-ED-XX-00-DR-A-PL-2011 C, 2020-MS-ED-XX-00-DR-A-PL-2012 C, 2020-MS-ED-XX-00-DR-A-PL-2013 C, 2020-MS- C and PP-S-01 B. A further revised elevational drawing Ref 2020-MS-ED-XX-00-DR-A-PL-2014 D was submitted after that and, at the final stages of the appeal, a revised plan Ref 034-ED-B0-00-DR-A-PL-0001-P2 was also supplied. As the revisions therein provide clarity as to materials, resolve small errors and/or make modest changes to the appearance and siting of the proposed development, I had regard to them without prejudice to any party.
5. The appeal is accompanied by a signed and dated unilateral undertaking which seeks to secure contributions towards mitigation for the potential effects of the scheme on the Dawlish Warren Special Area of Conservation and the Exe Estuary Special Protection Area and offsite contributions towards education and affordable housing (AH). A second signed and dated unilateral undertaking is also supplied which seeks to secure just the habitats mitigation. A draft S106 agreement is also before me which intends to secure all of the aforementioned obligations. I return to the matter of planning obligations later in my decision.

6. The Council failed to give notice of its decision within the prescribed period. An assessment of the proposal's merits is now included within the Council's appeal evidence. I have used this evidence, and the representations of interested parties, to formulate the main issues of this appeal, mindful that the starting point of my assessment, pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, is the development plan.

Main Issues

7. I therefore consider the main issues to be:
- the suitability of the site for the proposal, having regard to the development plan's approach to the supply of housing, with reference to the accessibility of services and facilities;
 - the effect of the proposal on the character and appearance of the area; and,
 - the effect of the proposal on biodiversity with reference to onsite European Protected Species (EPS) and biodiversity net gain (BNG).

Reasons

Suitability of the site

8. The site comprises two large barns and associated land, to the north and south of a farm track, which form part of a larger grouping of barns set within a former quarry. The barn to the north of the track (identified as Barns C and D on the plans) has an attached workshop and workshop storage area containing an office structure. Access to the site is via a short track shared with neighbouring properties, taken off New Exeter Road to the west.
9. The site is around 2.5km from Chudleigh, the nearest settlement defined by Policy S21A of the Teignbridge Local Plan 2013-2033 (adopted 2014) (TLP) and is well within the open countryside. Under the terms of Policy S22 of the TLP, development in the open countryside will be strictly managed and limited to given circumstances, none of which would be met by the proposal.
10. Policy S1 of the TLP sets out detailed criteria against which to assess proposals. This includes the accessibility of a site by walking, cycling and public transport for main travel purposes, particularly work, shopping, leisure and education and also the access to necessary services, facilities and infrastructure. TLP Policy S9, in part, also seeks for development to minimise dependence on cars,
11. The distance from the services of Chudleigh, the absence of public transport options, and the rural quality of the sinuous connecting highway network, which appears to be largely single width, unlit and devoid of dedicated pedestrian spaces, renders the site highly inaccessible. As such, there would be dependence for future occupants of the housing on travel by private vehicle.
12. Accordingly, I conclude that the site would not be suitable for the proposal, having regard to the development plan's approach to the supply of housing, with reference to the accessibility of services and facilities. It would conflict with the relevant aims of Policies S1, S9 and S22 of the TLP.

Character and appearance

13. The site is within a locally designated Area of Great Landscape Value (the AGLV) and within the Under Great Haldon Landscape Character Area (the LCA).

From the evidence and my own observations at my visit, the value of the AGLV and the LCA derives from the tranquil and agrarian landscape punctuated by belts of woodland and modest quantities of housing much of which is vernacular in form, and which is scattered or focused on existing farmsteads.

14. The existing buildings are large and finished in a green sheeting which has a somewhat industrial aesthetic. Nonetheless, they also recede to an extent into their sylvan setting and ultimately read as a utilitarian group of agricultural buildings which are comfortable within a principally agricultural landscape.
15. It is clear that much effort has gone in to trying to assimilate the proposed dwellings into this environment. However, in my view the pseudo agricultural typology would lead the dwellings to offer a confused design identity. The row of housing would present a density and a degree of repetition of detailing and form rather alien to the more scattered and vernacular pattern of housing in the AGLV and LCA. The incongruity of the housing would be exacerbated by the extent of glazing and balconies across their westward elevations, which would, through offering an overtly domestic appearance and associated light emittance, jar with the tranquillity of the landscape. This would not be effectively mitigated by additional planting at the roadside boundary.
16. I am mindful that Paragraph 79 of the National Planning Policy Framework (the Framework), amongst other things, is permissive of isolated homes in the countryside where their design would be of exceptional quality. However, given my findings in relation to this issue, this would not be achieved in this case.
17. Consequently, the proposal would have an unacceptable effect on the character and appearance of the area. It would conflict with the landscape and design aims of Policies S1, S2, S22 and EN2A of the TLP and the Framework.

Biodiversity

18. The appellant's emergent surveys, dated from May 2019 and June 2019 and carried out by EcoLogic Consultant Ecologists LLP, evidence that the north barn supports roosts for common pipistrelle and lesser horseshoe bat within the main body of the barn and within the workshop office respectively. The proposal would involve the removal of the common pipistrelle day roost and modification or replacement of the lesser horseshoe night roost.
19. All species of bats are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and the Wildlife and Countryside Act 1981. Circular 06/2005 advises that the presence of an EPS is a material consideration when a development proposal would be likely to result in harm to the species or its habitat.
20. Compensation for the removal of the common pipistrelle day roost would comprise of a tree mounted bat box, with crevice roosting bat provisions incorporated into the dwellings. I consider these to be proportionate measures. Compensation for the lesser horseshoe night roost is to comprise of a retained or replacement roosting void within a modified version of the workshop office.
21. Whilst I acknowledge the concerns raised in regard to this method, it appears that, even if the Council's measurement of the potential roost void within the structure is correct (9.56m³), it would exceed the Lesser Horseshoe Bat Conservation Handbook (Vincent Wildlife Trust 2008) guideline of 5m³ for a night roost. I note that the entrance to the roost would be located at ground

floor facing north east, and could be separated from the mainstay of residential activity by 3m high fencing.

22. There is no substantive evidence before me that the workshop office is not of sufficient structural integrity to stand alone. It appeared robust enough from my own observations at the site visit. With regard to its internal climate, I note that it is already, to an extent, open to the elements. I further understand that the size of the proposed opening is so designed so as to allow access for lesser horseshoe whilst also reducing light, inclement weather and heat loss within/from the internal space of the modified roost structure.
23. Consequently, the evidence suggests that these measures put forward by the appellant would maintain the population of the onsite EPSs at a favourable conservation status in their natural range and that Natural England would be likely to grant a licence for this element of the proposal. It is also my opinion, given the additional biodiversity enhancement measures proposed within the site¹, modest as they would be, that biodiversity net gain as required by Policy EN8 of the TLP and the Framework could be achieved across the development.
24. As such, the proposal would have an acceptable effect on biodiversity with reference to onsite EPS and BNG. It would accord in this regard with the biodiversity aims of Policies EN8, EN9 and EN11 of the TLP, Policy CHNDP9 of Chudleigh's Neighbourhood Development Plan 2019-2033 (made 2020) and the Framework.

Other Considerations

25. The appellant considers there to be a fallback position for 6 dwellings onsite pursuant to permitted development (PD) under Classes MA and Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The well-known case law on the subject of fallback positions has been cited² (Mansell). Mansell confirms that there should be a 'real prospect' of a fallback position being implemented and that a decision-maker should exercise planning judgment as to whether that would be the case depending on the particular circumstances at hand.
26. A hypothetical Class Q submission accompanied by a lighting assessment and a mock Habitats Regulations Assessment (HRA) is also before me. The reason for the lighting assessment and HRA is that the site is within a greater horseshoe bat Sustainance Zone and a Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (the SAC) roost at Chudleigh, and is within proximity to Chudleigh SAC roost radio tracked greater horseshoe bats. Greater horseshoe bats have been recorded within the site³ and there is the potential for the development to emit detrimental light disturbance upon greater horseshoe habitats. Likely significant effects from the proposal on the integrity of the SAC can be far from excluded in the first instance.
27. Article 3(1) of the GPDO grants permission for PD described in Schedule 2 subject to Regulations 75- 78 of the Habitats Regulations. Regulation 75 provides that it is a condition of any permission granted by a development order that development which is likely to have a significant effect on a European site (such as the SAC) alone or in combination with other plans or

¹ Identified within the 'Ecology Response' by EcoLogic Consultant Ecologists LLP dated 5 May 2021

² Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

³ EcoLogic Consultant Ecologists LLP emergent surveys - 22 and 26 May 2019

- projects must not begin until the developer has received written notification of the approval of the Local Planning Authority under Regulation 77.
28. Article 3(1) therefore means that development permitted by the GPDO which would affect a European site cannot be lawfully begun until the developer has made a Regulation 77 application and the competent authority is satisfied that the proposal would have no adverse effect on the integrity of the habitat. The undertaking of an Appropriate Assessment (AA) should adopt the precautionary principle and be concluded in favour of a proposal only if there is no reasonable scientific doubt.
29. If actual Prior Approval applications were to be submitted at the appeal site going forward, the responsibility for the AA element of any HRA essential for development to occur would likely fall to Teignbridge District Council as the competent authority, and undoubtedly not to me. Moreover, given that any AA would take place in the future, there is the potential for the circumstances of the SAC, and how it interacts with the site, to have changed. What this means is that, regardless of the content of the mock HRA before me, I cannot be certain in the here and now that a future Prior Approval application would receive the written notification of approval under Regulation 77 necessary for it to commence.
30. This leads me to be equally uncertain that this PD fallback position is a greater than theoretical possibility or is a real prospect. For these reasons, it warrants very limited weight in favour of the scheme. It also follows that the further 'material improvements' suggested by the appellant, which are predicated on being better than the PD fallback position, also carry very limited weight. Whilst I acknowledge the various appeal decisions provided by the appellant in relation to the issue of a PD fallback, none appear to grapple with this specific issue, nor did the scheme in relation to Mansell for that matter⁴.
31. The appellant has raised the prospect of the further fallback position of planning permission being granted for the reuse of the barns. This is, in part, because Paragraph 79 c) of the Framework supports schemes which would reuse a redundant or disused building and enhance its immediate setting. However, it is not demonstrated how a scheme could provide the necessary enhancement here. The appeal decision ventured in support of this argument was determined on the basis of its 'very specific circumstances'⁵. This decision, and this potential fallback position, also therefore attract very limited weight.

Other Matters

32. Similarly, because an AA should be carried out when a proposal is considered likely to have a significant effect on a European site⁶, it is only required in circumstances where the granting of permission is a prospect. As this is not the case here, I have not had cause to undertake AAs as to the impacts of the proposal itself on the respective integrity of the SAC, the Exe Estuary Special Protection Area and the Dawlish Warren Special Area of Conservation.
33. Whilst the Council has made comments with regard to the highway network and highway safety, to my mind the vehicular movements associated with the

⁴ Appeal Refs : APP/Y1138/W/20/3252641 and APP/M1710/W/20/3258256, and those contained within the document titled 'Stancott 3rd Party Comments' and the Statement of Case

⁵ Appeal Ref: APP/B3410/W/19/3232085

⁶ Planning Practice Guidance Paragraph: 002 Reference ID: 65-002-20190722

five dwellings would be no greater than that which would be attributable to the appeal site put to an alternative use, including its lawful use. With regard to the living conditions of future occupiers, I am satisfied that the relationship between the site and the adjacent agricultural buildings within the appellant's control could be resolved through the use of a conditions precluding livestock use and redirecting agricultural vehicles away from, not through, the site.

34. Reference has been made by both parties to the emerging Local Plan Part 1 (2020-2040), particularly paragraphs 6.74 and 6.76, which provide supporting text to Policy H12: Replacement Dwellings. However, I understand that this plan has not yet undergone public examination and, given its consequent potential to change, it has had limited weight in my assessment.
35. The previous comments made by Council officers about the merits of the planning application before the appeal attract very limited weight as they do not reflect the Council's position at the appeal. I have also noted the criticisms lodged by the appellant about the conduct of the Council before and during the appeal. However, these matters are not germane to my assessment, which focuses on the planning merits of the appeal.

Planning Balance

36. The unsuitability of the site for the proposal, having regard to the development plan's approach to the supply of housing and the harm to the character and appearance of the area, bring the proposal into conflict with the development plan when read as a whole.
37. The government is seeking to significantly boost the supply of housing and the scheme would reuse a currently disused site to contribute five, modern and energy efficient homes to the local supply. In this regard, given the quantum that would be delivered, the scheme would provide modest economic, social and environmental benefits. The modest BNG that would be delivered also carries limited weight. The offsite AH contribution, which would be less than that required to achieve policy compliance, would be a benefit of very limited weight, even taking into account the Council's 2020 AH delivery.
38. Overall, there are no other considerations, including those put forward by the appellant, which outweigh the conflict with the development plan.

Conclusion

39. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed,

Matthew Jones

INSPECTOR