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## Appeal Decision

Site visit made on 26 October 2021

**by Helen O'Connor LLB MA MRTPI**

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

**Decision date: 27 October 2021**

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**Appeal Ref: APP/Y1138/W/21/3278969**

**Land at Binneford, Yeoford, Nr Exeter, Devon**

- 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 Ray Toms against the decision of Mid Devon District Council.
  - The application Ref 20/01780/FULL, dated 19 October 2020, was refused by notice dated 30 April 2021.
  - The development proposed is the removal of 3 in no. agricultural buildings and erection of 2 in no. dwellinghouses.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Government published its revised National Planning Policy Framework (the Framework) on 20 July 2021. The parties have had the opportunity to refer to the revised Framework as part of the appeal process.

### Background and Main Issues

3. The appellant accepts that the location of the appeal site is not one where housing would normally be supported by policies in the Mid Devon Local Plan 2013-2033, July 2020 (LP)<sup>1</sup>. However, one of the agricultural buildings present on the appeal site has prior approval<sup>2</sup> for a conversion into two dwellings by virtue of permitted development rights contained in Class Q, Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order). He contends that by comparison, the proposal represents a scheme of betterment in terms of design, biodiversity, flood risk and sustainable energy production and efficiency.
4. The main issues are (1) the impact of the proposal on the character and appearance of the area, having particular regard to the significance of Higher Binneford, a grade II listed building, and (2) if harm arises, whether this is outweighed by other material considerations.

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<sup>1</sup> Page 10 Appellant's Statement of Case

<sup>2</sup> Reference 21/00791/PNCOU dated 21 June 2021

## Reasons

### *Character and appearance*

5. The appeal site comprises a parcel of agricultural land set in a rural valley. The presence of narrow lanes, plentiful tree cover, banked hedgerows, fields and sporadic built form contribute towards a strong countryside character. The topography of the area adds to its attractiveness.
6. To the south of the appeal site, situated on elevated land is Higher Binneford, a grade II listed building. Having regard to the list description and my observations, its significance is primarily derived from its aesthetic appearance. It is an example of an attractive cob and thatch house originally dating from the late 17<sup>th</sup> century. The undulating rural valley forms an important part of the wider setting within which this designated heritage asset is experienced. I have a general duty<sup>3</sup> to have special regard to the desirability of preserving the listed building or its setting.
7. Aside from grass, trees and hedgerows at the appeal site, there are three agricultural buildings. Of these the cattle shed is the most substantial structure, as it is comprised of blockwork with roof cladding. It is this structure that has prior approval to convert to two dwellings. The remaining pole barn and calving pens are generally open sided, rudimentary structures. The collection of buildings has an obviously agricultural appearance befitting the surrounding land uses. Moreover, they have an unobtrusive presence due to their modest height, muted materials, in some cases insubstantial building fabric, as well as the screening provided by the established hedgerow adjacent to the lane. As a group, they integrate with the rural surroundings. Overall, the buildings have a neutral impact on the prevailing rural character and appearance of the area and setting of the listed building, whilst the wider verdant site makes a positive contribution to them.
8. The proposal would remove the agricultural buildings and introduce two substantial dwellings set in generous grounds. Both dwellings would be noticeably higher than the existing cattle shed, as is illustrated in the cross-section drawing provided. Additionally, the detached nature of the dwellings would be more dispersed across the site than the built form of the cattle shed. The lighting associated with the dwellings would also draw the eye and make the presence of the structures more obvious. In combination with the rendered finish to some elevations this would give the proposed houses much greater prominence than the agricultural buildings from the adjacent lane and in the wider landscape.
9. Although the appellant indicates that design cues have been taken from linhay structures in the county, the footprint depth of both dwellings would appear to be deeper than might typically be expected for such simple linear agricultural structures. As such, the resulting dwellings would have proportions more reminiscent of generic sub-urban development. This would be especially so given the L shaped footprint for proposed dwelling 1. The proportions of respective storeys and the fenestration employed would generally reinforce this impression. Moreover, the siting of the two dwellings would not follow a recognisable courtyard arrangement more typical of such traditional rural buildings.

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<sup>3</sup> Section 66, Planning (Listed Buildings and Conservation Areas) Act 1990

10. The evidence provided does not convincingly explain how the proposed designs have been derived from positive examples in the context of the appeal site. It follows that the proposals would lack identity in this context and consequently, would not successfully integrate into the rural surroundings. On this basis, the use of materials to add detail would appear cosmetic and ultimately would fail to address the fundamental harm arising from the building types proposed.
11. Moreover, the block plan shows a diagonal subdivision of the land parcel which is not shown to follow any historic or physical feature on the ground. Although an area is shown for allocated formal garden, the red line shows a much wider area would be included as part of the grounds to the dwellings and it is not explained how this would be kept as a field. Even if residential activity were confined to the green lines shown on the Block Plan (Revision B), this nevertheless covers a notable area where domestic paraphernalia such as outdoor seating, play equipment, outbuildings, boundary treatments, ornamental planting and areas of hardstanding or similar objects for two separate households would be likely introduced. This would emphasise the domestic nature of the development and would have an appearance discordant with the overtly rural context.
12. I acknowledge that two sections of proposed Devon hedge bank and three native trees are shown. Whilst this would mitigate the degree of harm to an extent, it would not fully overcome my concerns regarding the impact arising from the extent of the grounds, formal garden or built form.
13. The appellant further contends that the existing agricultural buildings are an eyesore, and the proposal would remove them. However, although in somewhat poor condition, my observations were that they had a low key presence that was not objectionable. Accordingly, their removal would not weigh in favour of harmful development.
14. Taken together, these factors would adversely diminish the prevailing rural character of the area. Therefore, it would fail to comply with paragraph 130 of the Framework which stipulates that planning decisions should ensure developments add to the overall quality of the area and are sympathetic to local character and history, including the surrounding built environment and landscape setting.
15. Consequently, the proposal would be harmful to the significance of the setting of Higher Binneford as it would affect the surroundings within which the listed building is experienced. However, given the relatively limited scale of the proposal, the resultant harm would be less than substantial. Paragraph 202 of the Framework advises that in such circumstances the harm should be weighed against the public benefits of the proposal.
16. The development would provide two dwellings thereby contributing to overall housing supply, and there would be economic benefits arising from the contributions and activities of future occupants which may support services and facilities within the rural area. However, prior approval already exists for two dwellings at the site which the appellant emphasises is a realistic fall-back position in the event the appeal fails. On that basis, the fall-back position would secure similar benefits and so little additional public benefit would arise in relation to these factors.

17. The appellant contends that by comparison to the prior approval fall-back scheme, the proposal represents aesthetic betterment. Although I have not been provided with the approved plans for the prior approval, I am mindful that design and external appearance was one of the matters which the Council was required to consider as part of Condition Q.2(1)(f) of the Order, and evidently no objection was raised in that regard. Furthermore, the dwellings would have been contained within the dimensions of the existing cattle shed, hence the built form would not be as dispersed or as high. Additionally, paragraph X of the Order defines the curtilage of the permitted right to at most, an area of land no larger than the footprint of the cattle shed. Therefore, the impact arising from the extent of domestic grounds could not be as extensive. For these reasons, I cannot agree that the proposal would be preferable in design terms. Therefore, this is not a public benefit.
18. Similarly, flood risk was one of the matters considered as part of the prior approval scheme, and the Flood Risk Assessment provided<sup>4</sup> assesses the residential conversion of the cattle shed. It concludes that the risk from flooding would be acceptable subject to flood mitigation measures. Therefore, whilst the proposal may improve the flood mitigation measures to a degree, these are likely to be marginal given that the approved prior approval scheme included mitigation and was not considered to result in unacceptable harm. The public benefits in this regard attract little weight.
19. Reference is also made to comparative improvements to energy production and efficiency. Nevertheless, these are not quantified. Whilst the proposed heating and power measures for the two dwellings are listed<sup>5</sup>, no details are given in these regards for the prior approval dwellings to enable a meaningful comparison. However, it would seem likely that some of the measures could be incorporated and it would in any event, be necessary to meet modern building regulations standards. Therefore, there is little reason to suppose that the prior approval dwellings would be intrinsically inefficient. Even if considered on their own merits, the efficiency and energy production benefits derived from two dwellings would be limited. Furthermore, the fall-back position would reuse an existing building rather than necessitate building afresh, which also has implications for overall sustainability. Therefore, it is not shown that notable benefits in this respect would arise.
20. I acknowledge that the proposed tree and hedgerow planting would result in some biodiversity benefit. Nevertheless, given the modest scale of the development, this would be limited and so attracts a commensurate amount of weight.
21. Although less than substantial, mindful of the statutory duty and national policy<sup>6</sup>, the harm to the significance of the designated heritage asset attracts great weight. Therefore, the limited public benefits identified would not outweigh the harm.
22. My attention is drawn to examples<sup>7</sup> of where the Council has given prior approval and subsequent planning permission for residential development close to listed buildings. In relation to the prior approvals cited, this would be

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<sup>4</sup> Prepared by Unda dated September 2016

<sup>5</sup> Pages 10-11 Appellant's Statement of Case

<sup>6</sup> Paragraph 199 National Planning Policy Framework

<sup>7</sup> Page 15-16 Appellant's Statement of Case

generally consistent with the circumstances before me where the Council has also granted prior approval. In relation to subsequent 'fall-back' planning applications, I have not been provided with the details of the cases which inhibits a comparison with the appeal proposal. Similarly, in the absence of any drawings or notable details of the recent planning approval highlighted<sup>8</sup> at Cheriton Bishop I am unable to gauge its similarity with the appeal proposals.

23. However, these examples relate to different sites and therefore, different listed buildings within the district. Given the unique nature of land, the characteristics of each site and significance of each designated heritage asset will be distinct. As such, they have little relevance to an assessment of the appeal site and its impact on the character and appearance of the area and setting of Higher Binneford, which I have primarily considered on its individual planning merits.
24. Accordingly, I find that the proposal would be harmful to the character and appearance of the area and setting of a designated heritage asset. Therefore, it would conflict with policies S1, S9, S14, DM1 and DM25 of the LP. In combination these policies, amongst other matters, require proposals of high quality design that reinforce local character and distinctiveness whilst preserving or enhancing the countryside and setting of designated heritage assets.

### **Other material considerations**

25. The appellant refers to the prior approval for the conversion of the cattle shed into two dwellings as a fall-back position that he contends would be less preferable than the appeal proposal. I accept that, if the appeal proposal were not permitted, there is a realistic prospect of the prior approval proceeding. As such, the permitted development scheme does amount to a fall-back position and is therefore of considerable weight. My approach on this is consistent with the caselaw<sup>9</sup> to which I am referred.
26. Nevertheless, it will be seen from my reasoning on the first issue that I found that, in this context, the proposal would not be an aesthetic improvement but would rather result in greater harm to the character and appearance of the area and setting of the listed building. In addition, the benefits from the lessening of flood risk and environmental energy gains accrued would be marginal. Therefore, despite the limited biodiversity improvements, taken as a whole, I cannot agree with the appellant's assertion that the proposal would represent a betterment relative to the fall-back position. Consequently, the existence of the fall-back position does not attract weight in support of the appeal proposal.

### **Other Matters**

27. During the planning application the appellant revised the plans to address concerns made regarding the impact on the character and appearance of the area. To an extent these may have reduced the degree of harm. Nevertheless, just because the proposal does not result in even greater harm does not present sound grounds to justify the harm I have identified.
28. Representations received objecting to the proposal requested that the existing prior approval for residential conversion is revoked. However, this is not a

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<sup>8</sup> Reference 20/02047/FULL, Appellant's Response to MDDC's Statement of Case

<sup>9</sup> Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314

matter which lies within the scope of my determination, which extends only to the merits of the proposal before me.

### **Planning balance and conclusion**

29. Harm would be caused to the character and appearance of the area and the setting of a designated heritage asset and there would be conflict with the relevant policies of the development plan. Paragraph 126 of the Framework states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
30. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>10</sup>. No compelling reasons have been provided to justify my determining the development other than in accordance with the adopted development plan. Hence, for the reasons given above I conclude that the appeal should be dismissed.

*Helen O'Connor*

INSPECTOR

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<sup>10</sup> Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.