



Appeal Decision

Site Visit made on 18 October 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/U1105/W/21/3278488

Barns at Higher Hawkerland Farm, Sidmouth Road, Aylesbeare, Exeter EX5 2JW

- 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 C.J Wyatt and Son against the decision of East Devon District Council.
 - The application Ref 20/1582/FUL, dated 27 July 2020, was refused by notice dated 19 March 2021.
 - The development proposed is the change of use and subdivision of Barns 1 and 2 and part of Barn 3 from agricultural use to form 10no. storage and distribution units (Use Class B8), including external alterations to provide a roller shutter door and a by-pass door to each unit, provision of infill cladding to the existing hit & miss boarding to the external walls and provision of a gravel finish to the existing earth hardstanding to form Yard 1 and Yard 2 to be used for additional external storage associated with the units (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and subdivision of Barns 1 and 2 and part of Barn 3 from agricultural use to form 10no. storage and distribution units (Use Class B8), including external alterations to provide a roller shutter door and a by-pass door to each unit, provision of infill cladding to the existing hit & miss boarding to the external walls and provision of a gravel finish to the existing earth hardstanding to form Yard 1 and Yard 2 to be used for additional external storage associated with the units (retrospective) at Barns at Higher Hawkerland Farm, Sidmouth Road, Aylesbeare, Exeter EX5 2JW in accordance with the terms of the application, Ref 20/1582/FUL, dated 27 July 2020, and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs has been made by C.J Wyatt and Son against East Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. At the appeal stage a revised site plan has been submitted which shows fencing to contain the two yards. This would restrict and confirm the extent of those areas. The Council has confirmed its view that the revised plan (8081-100 Rev C) would not prejudice interested parties and I agree. Consequently, I will determine the based on the revised site plan.

4. It is evident from all the submissions and from my site visit that the change to the external appearance of the buildings have taken place and the uses commenced. I will consider the appeal accordingly.

Main Issue

5. The main issue is whether or not the volume and character of the traffic generated by the development causes harm to the living conditions of the occupants of local accommodation with particular regard to any noise or dust pollution.

Reasons

6. The application buildings have been converted to 10 business units and are operating within Use Class B8 (storage or distribution) of The Town and Country Planning (Use Classes) Order 1987 (as amended). One half of one of the three buildings has been retained in agricultural use. The business buildings are accessed via a reasonably long private drive from the A3052 that also serves about 27 residential units, farm buildings and agricultural land.
7. I am satisfied that the use of the buildings and associated yards themselves do not have an adverse effect on the living conditions of local residents because of their location away from the residential units.
8. The section of the drive from the A3052 to the bend is predominantly tarmac and, from the bend to the appeal buildings, the drive is mainly an unbound surface that includes chippings. Evidence from traffic surveys have been submitted of the vehicle movements along the drive. The first survey during a period in July to August 2020 showed a very broadly even split between the traffic associated with the residential properties and those from the business units. The farm traffic movements were more limited in number. At that time, there was a reasonable number of lorry movements to and from the business units and it is explained by the appellant that about 40-50% of the commercial traffic was associated with a fibre broadband contractor who has since vacated the appeal site.
9. A further traffic survey has been undertaken, this one based on recordings from a CCTV camera located near the bend in the drive. This data was captured over a 103 day period from the start of January to nearly the middle of April 2021. The analysis of this submitted data by the appellant shows that the business units generated about 17 daily movements¹, of which 10 movements were vans, 4 were cars and 2 were lorries. The evidence indicates that the vehicle movements were predominantly between the hours of 7.30am and 6.30pm, which equates to about 1.5 movements per hour during this period.
10. I have found no material reason to dispute the traffic movement data from the surveys and therefore I attach the information substantial weight in my considerations.
11. I am conscious that a reasonable number of local residents² have written to confirm that the use of the commercial units and the related traffic movements

¹ This average includes weekend vehicle movements which are lower.

² I also note the letter, dated 12 May 2021, from the Chairman of the Newlands Park Residents Association where it is commented that, when surveyed, of the 18 residents, 16 residents are in favour of the scheme and 2 were not, but had reservations, i.e. making sure that the road was kept clean. I also note the further representation

raise no amenity concerns for them, including that the new uses are preferable to the previous cattle rearing in the barns and the associated traffic movements which took place along the drive. I place considerable weight to these representations as these residents have the experience of the commercial traffic using the drive over a reasonable period of time³.

12. My assessment is that most of these properties, including the Newlands Park homes, are set back sufficiently from the drive or reasonably well screened by landscaping such that the general level and type of traffic movements associated with the commercial units do not have a material effect on the living conditions of these occupants.
13. However, I am also aware of the objections from some local residents regarding the impact of traffic movements on their living conditions. The Paddocks is a dwelling towards the start of the drive which although set back a little way from the drive has quite an open frontage. This resident has commented that they continue to be disturbed at day and night by vehicles passing along the drive.
14. During the daytime there appears to be a reasonable level of traffic which also serves the residential properties. In my judgement, the level of additional traffic associated with the commercial units during this time, based on the survey data with the present tenants, is not at such a volume or of such a type that alone, or cumulatively with other traffic, causes an unreasonable or unduly harmful level of disturbance when those vehicles move past the residential properties more closely positioned with the drive.
15. While the evidence indicates that reasonably few vehicles access the appeal site outside of the broadly daytime hours, there appears to be some and therefore at night, when ambient noise levels are likely to be lower, this could potentially be disturbing. Consequently, if approval was to be granted, in the circumstances of this case, a condition that restricted the hours that the appeal site could be accessed would be reasonable and proportionate to address noise concerns at night.
16. Taking all the evidence into account, I am satisfied that the level of traffic movements and its character, if restricted to broadly daytime hours, would not cause an undue impact by reason of noise and general disturbance to the living conditions of occupiers of properties along the drive. I appreciate that the traffic movements are to some extent dependent on the type of tenant. However, the size and rural location of the units, the experience of the site operating with the tenants that have located to the site, together with restrictions on hours of access, would, in my view, provide sufficient control to ensure that the activities operated in a way that would not unduly affect the living conditions of local residents, particularly in relation to any noise disturbance.
17. At the application stage, a resident raised a concern with dust from the drive, it is assumed in the area beyond the bend. In this location, the drive has a looser surface and therefore potentially could create a problem. However, from my

from the Chairman dated 11 August 2021 which states that we, as a collective, unanimously give 100% backing to the change of use of the Barns.

³ The application form states that the work or use commenced in September 2019 and the appellant's appeal statement explains that the units on the site have been operational since 2019 and most of the units have been occupied since early 2020.

observations the surface is now fairly well contained and the adjoining properties are either fairly well separated from the drive or generally screened by landscaping. I am not persuaded by the evidence, given that the site has been operating for some time, that dust or any other air quality issues causes a material problem to the living conditions of residents of properties in the area.

18. Finally, I am satisfied that the scheme would assist with farm diversification as the evidence indicates that the wider land holding includes farm land and a sheep enterprise and that the size of the development can be categorised in policy terms as a small scale economic development scheme in a rural area.
19. It follows from this assessment that I conclude that the volume and character of the traffic generated by the development, subject to a restriction on hours of access, would not cause undue harm to the living conditions of the occupants of local accommodation. Accordingly, the scheme complies with Strategy 7, Policies D1, D8, EN14, E4 and E5 of the East Devon Local Plan 2013-2031 which allows, amongst other things, small scale economic development in rural areas provided that it has no detrimental impact upon the amenities of neighbouring properties.

Other Matters

20. I have taken into account all the representations both for and against the scheme, including the comments from the Parish Council.
21. I have noted the concerns raised in terms of highway safety. However, the County Highway Engineer has examined the proposals and has raised no objection on highway safety grounds. Having visited the site, including the access onto the main road, and noted the speed humps along the drive (which help limit the speed of vehicles) together with the passing opportunities for vehicles, I have found no reason to disagree with the conclusion of the County Highway Engineer.
22. Other issues that have been raised, including that the scheme is retrospective, are not planning matters of such weight that they lead me to a different conclusion on the main issue.

Conditions

23. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. I have amended the wording where necessary in the interests of clarity or to meet the six tests in the Guidance. The statutory time limit and a condition specifying the approved plans are not necessary as the development has taken place.
24. The Council has suggested a condition that limits the use of the site to specified hours. The appellant has indicated that were I to come to the conclusion that such a condition was necessary then it would be accepted and has suggested details on the hours of use for the site. For the reasons explained, I do consider it necessary that the units are not accessed at certain times. I have carefully considered the timings and reasons for the hours suggested by the Council. However, given the position of properties along the drive and the size and scale of the units, together with the information on traffic movements, I consider that the restricted timings suggested by the appellant would provide a suitable and necessary restriction on the activities in the interests of the living conditions of local residents whilst not unduly hindering the ability of the

businesses to operate. I will impose such a limitation in the form of a planning condition.

25. The development seeks a use of the site within Use Class B8 and this has a number and character of vehicle movements and I have found, subject to a condition restricting the hours of access, that this is acceptable. There are some permitted development rights that may allow alternative uses to take place. These uses could have a different level, pattern and character of vehicle movements and given the general location of residential properties, exceptionally it is necessary for a condition to restrict the site to Use Class B8.
26. The site is reasonably well screened by trees and other planting, although there is a bund around part of the site which may benefit from additional planting. A condition which requires the submission of a landscaping scheme for the site, that would also include identifying which trees and other vegetation is to be retained, is necessary in the interests of the visual amenities of the area. A three month period is reasonable for the submission of this information and which also would require agreement to the timetable for implementation. Because the scheme is retrospective I have reworded the suggested condition to cover the situation were a landscaping scheme not to be submitted or such a scheme to be submitted but not to be of an acceptable standard.
27. The Council has suggested a condition which requires details of the construction of a bound surface from the main road to the site compound. Much of the drive already has a bound surface and the section that is unbound mainly serves the commercial site and has a reasonable and acceptable surface for its function. Consequently, such a condition is not reasonable or necessary.

Conclusion

28. I have found that the development is acceptable for the reasons explained. In the light of this analysis, the scheme complies with the development plan when considered as a whole and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, and taking all other matters into account, I conclude that subject to the specified conditions, the appeal should be allowed.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) No storage unit, yard or parking area hereby permitted shall be accessed other than between the hours of 7am to 7pm Monday to Fridays, 8am to 4pm on Saturdays and 10am to 3pm on Sundays. There shall be no access or use of the site on Bank Holidays
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), the land and buildings the subject of this permission shall only be used for purposes within Class B8 of Schedule 1 to the Town and Country Planning (Use Classes) Order 1987 (as amended), or purposes within any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 3) Unless within 3 months of the date of this decision a scheme for the landscaping of the site is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within the first planting season of the Local Planning Authority's approval or such timetable set out in an implementation plan with the landscaping scheme, the use of the site shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and until such time as a scheme approved by the Local Planning Authority is implemented.

The landscaping scheme shall include the retention and planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatments. Thereafter landscaping of the site shall be carried out in accordance with the approved landscaping scheme and implementation plan and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

End of Schedule