



Appeal Decision

Site visit made on 12 April 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th June 2022

Appeal Ref: APP/U1105/W/21/3288638

Luton Barns, Luton Lane, Payhembury, near Honiton EX14 3HZ

- 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 and Mrs Bere against the decision of East Devon District Council.
 - The application Ref 21/0875/FUL, dated 15 March 2021, was refused by notice dated 16 June 2021.
 - The development proposed is demolition of the existing and redundant barns and construction of a single dwellinghouse, annexe and garage (alternative to change of use of agricultural building to dwellings under class Q approval reference 19/0285/PDQ)
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing and redundant barns and construction of a single dwellinghouse, annexe and bat shed (alternative to change of use of agricultural building to dwellings under class Q approval reference 19/0285/PDQ) at Luton Barns, Luton Lane, Payhembury, near Honiton EX14 3HZ, in accordance with the terms of the application, reference 21/0875/FUL, dated 15 March 2021, and the plans submitted with it, subject to the conditions in the Schedule to this decision below.

Preliminary Matters

2. The description in the banner heading above is taken from the Council's Decision Notice, which more clearly describes the proposal. The appellants have used this description in the appeal form, and I am satisfied that no parties would be prejudiced as a result.
3. The appellant has provided amended plans showing the inclusion of a bat shed and omission of the originally proposed garage. The Council say the garage was not a deciding factor, and so the appeal should be determined on the original drawings in this respect. However, given the relatively small extent of the changes, no party's interests would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal on these plans, including removal of the garage.
4. In its decision, the Council's second reason for refusal refers to the potential for the barns to offer suitable habitats for protected species, but that no ecological information had been provided. Subsequently, the appellants' protected species survey has found that demolition of the barns would result in the loss of bat roosts and a night/feeding perch. However, with the provision of the bat shed, the conservation status of the bats would not be affected. The Council has confirmed that its second reason for refusal has been overcome, and that

Policy EN5 of the East Devon Local Plan 2013-2031 (the EDLP), adopted 2016, has been satisfied. I see no reason to disagree.

Main Issue

5. The main issue is the proposed development's location and access to services and facilities, its effect on Best and Most Versatile (BMV) agricultural land, and on the character and appearance of the area.

Reasons

6. The site is within the countryside, near to the relatively remote settlement of Luton, which has few public services or facilities. Although there is a bus stop, few services operate and, as such, most journeys serving the proposed dwelling are likely to be undertaken by private car. The site's location does not therefore promote sustainable modes of travel or transport, and the proposal would not be easily accessible by pedestrians, cyclists or using public transport, to minimise the need to travel by car.
7. It is common ground that the appeal site consists of BMV agricultural land at Grade 2. The undeveloped part of the site remains available for agricultural purposes but would be lost to this use as a result of the appeal proposal, including its residential garden.
8. Furthermore, the dwelling and annexe would introduce domestic features and uses. This, together with the more formal hard and soft landscaping at the front of the site, would result in a domestic appearance that would conflict with the rural character and form of the landscape here.
9. EDLP Strategy 7 makes clear that development in the countryside will only be permitted where (amongst other things) it would not harm the landscape and accords with a specific Local or Neighbourhood Plan (NP) policy. EDLP Policy H6 has been referred to, in respect of replacement dwellings. However, this requires a permanent habitable dwelling to exist on the site. This is not the case here, meaning that the proposal cannot draw support from this Policy.
10. I therefore conclude that the proposed dwelling would have poor access to services and facilities, contrary to Strategy 5B and Policy TC2 of the EDLP that development should promote sustainable modes of travel and minimise car travel.
11. It would have a harmful effect on available BMV land, contrary to the requirement of EDLP Policy EN13 that BMV land will be protected from development not associated with agriculture or forestry, and the requirement in the National Planning Policy Framework (the Framework) that the economic benefits of BMV land are recognised. The harm to the landscape and landform would conflict with EDLP Strategy 7.

Other Matters

12. Planning permission for the development of four dwellings on the site has already been granted, in the form of the Prior Approval referred to in the banner heading. The scheme is for four 'smaller dwellings', each having a floor area of under 100 square metres. A separate building would be required to provide alternative roosting for bats. However, the Council say that such a

- building would 'probably' be supported, so the Prior Approval scheme remains a realistic fallback prospect to be weighed against the harm that I identify above.
13. The fallback would result in the loss of less agricultural land than the appeal proposal. Given the limited size of the additional land lost by the appeal proposal, however, this harm only attracts a modest amount of weight in the overall balance.
 14. The proposed dwelling would have a more domestic appearance than the fallback, a more formal entrance and driveway and a greater encroachment of domestic garden space into the countryside. However, the fallback would have greater domestication from more people, cars and movements. A planning condition can limit development within the garden, whilst the proposed landscaping and reduction in access points would help to mitigate its visual impact. I therefore consider that the fallback's benefits in respect of the character and appearance of the area have only limited weight.
 15. The Council is also concerned that the proposal would deliver only one large six-bedroom dwelling, rather than the four smaller, more affordable, dwellings under the fallback. The Government's response to the Rural Planning Review, and resultant amendments to the Prior Approval legislation, sought to increase housing availability and meet local needs.
 16. However, whilst EDLP policy H2 seeks to promote a mix of dwelling sizes and types, it only applies to proposals of 15 dwellings or more. As such, there is no clear Development Plan policy support in this case to prefer the potential smaller dwellings that could be created under the Prior Approval legislation to the larger dwelling proposed here.
 17. The Payhembury NP does not apply to the site, but the Devon County Council (DCC) Minutes demonstrate the area's affordable housing needs, as does the draft Housing Needs Report for Broadhembury Parish. However, these relate to those in need of housing below market value. Both options here are for open market dwellings that would not necessarily meet housing need. Furthermore, the fallback dwellings could be occupied as second homes rather than releasing their occupiers' current accommodation. As such, I can give only limited weight to the potential 'loss' of four smaller dwellings.
 18. Against the harm caused by the appeal proposal, the fallback would result in fewer dwellings at the site's location, which I have already found is poor in respect of access to services and facilities. Furthermore, each separate dwelling and its occupants would have their own day-to-day requirements and associated movements. Therefore, the fallback would generate greater movements, with a pattern of development more intensive than the appeal proposal. Bearing in mind EDLP Policy TC2 and Strategy 5B, this means that the fallback would result in significantly greater harm than the appeal proposal.
 19. In terms of energy use, the fallback scheme would re-use existing buildings, avoiding the waste and energy use from demolition and construction. However, I have no evidence on the comparable levels of waste and energy and the fallback could make use of renewable energy technologies, designed-in from the outset.

20. The demolition of the barns would result in the loss of sites inhabited by birds and bats. However, the provision of the bat shed overcomes the principal biodiversity concern, and results in limited net biodiversity benefits.

Planning Balance

21. Although the fallback of four dwellings would cause less harm in respect of Grade 2 agricultural land and to the area's character and appearance, it would have significantly greater harm in respect of access to services and facilities than the proposed single dwelling and annexe, and without the further minor benefit in respect of biodiversity.
22. I therefore conclude that the fallback is a realistic prospect, but that it would cause significantly more harm than would the appeal proposal. The balance of considerations leads to the appeal being allowed.

Conditions

23. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice Guidance (PPG).
24. A condition relating to a time limit for development is necessary. I see no reason to restrict this to completion within the timeframe of the Prior Approval application, given that this would not then be implemented. I shall therefore impose the normal three-year requirement, for commencement.
25. A condition requiring adherence to the approved plans is necessary for certainty. It is also necessary to require details and samples of external materials, so they are sympathetic to the character and appearance of the area. For similar reasons, details of landscaping provision and the retention and protection of trees also needs to be secured by condition.
26. In the interests of wildlife conservation, a condition is needed to ensure that development takes place in accordance with the Protected Species Survey. The bat shed would replace an existing habitat that would be lost through demolition, so must be provided before development commences. The Survey also requires inspection in respect of nesting birds to be undertaken before demolition (in addition to other mitigation), which must also be secured by condition. The appellants have agreed to these measures being required by pre-commencement conditions.
27. Given my findings above regarding the site's access to services and facilities, a condition is required to ensure that the annexe is only used ancillary to the principal dwelling, and not as a separate dwelling or holiday let.
28. The Council has suggested that permitted development rights are withdrawn, on the same basis as the fallback scheme. The appellant has questioned whether this is necessary, and I am conscious of the PPG's advice¹ that the blanket removal of freedoms to carry out small scale domestic alterations is unlikely to be reasonable or necessary.
29. However, although I have found that the building would have a degree of domestication, I consider that any further extensions, boundary treatments,

¹ Paragraph: 017 Reference ID: 21a-017-20190723

outbuildings, hard surfaces and even relatively minor additions could undermine the intended agricultural design of the building, harming its appearance, as could within the larger curtilage approved. I therefore consider that such conditions are necessary and reasonable, although I have amended the Council's suggested wording to refer to the relevant legislation.

30. The appellant has suggested a condition that renewable technologies such as solar panels and air source heat pumps are incorporated into the scheme. However, while this would be preferable, I do not consider that these measures are critical to permission being granted and so a condition is not necessary. I note that the Council has also not suggested a such condition.

Conclusion

31. For the reasons given above, I have found conflict with the Development Plan and with the Framework. However, the greater harm caused by the fallback justifies a decision otherwise than in accordance with the Development Plan. I therefore conclude that the appeal should be allowed.

O Marigold

INSPECTOR

Schedule of Conditions

- (1) The development hereby permitted shall begin no later than three years from the date of this decision.
- (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1606 PL10, PL18, PL19, PL20, PL23, PL24, PL25, PL26, PL27, PL30.
- (3) Before development above foundation level is commenced, a schedule and samples of materials and finishes, to be used for the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- (4) No development above foundation level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme to include the 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 treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development and the landscaping shall be maintained for a period of five 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.
- (5) Development shall be carried out in accordance with the Tree Protection Statement within the letter from Advanced Arboriculture dated 5 March 2021 and the accompanying plans referenced therein.
- (6) No development shall take place, including demolition, until the bat boxes and bat shed hereby permitted have been constructed in full accordance with the approved drawing 1606/PL30 and the Protected Species Survey prepared by

Richard Green Ecology dated November 2021. The bat shed shall thereafter be retained in perpetuity and shall not be used for any other purpose.

- (7) The development shall be carried out in accordance with the Protected Species Survey prepared by Richard Green Ecology dated November 2021 including in respect of mitigation during demolition and construction. The dwelling hereby approved shall not be occupied until the bird mitigation measures identified in the Protected Species Survey have been installed into the annexe.
- (8) The annexe hereby permitted shall only be used in conjunction with, and ancillary to, the use of the principal dwelling and shall not be used as a separate dwelling or holiday let.
- (9) Notwithstanding the provisions of Schedule 2 Part 1 Classes A, AA, B, C, D, E, F, G and H of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the dwelling including the annexe shall not be enlarged, improved or altered, no building, enclosure, swimming or other pool, oil or LPG container or hard surface shall be provided within its curtilage and no chimney, flue, soil or vent pipe or microwave antenna shall be installed, altered or replaced without the prior express consent of the Local Planning Authority.
- (10) Notwithstanding the provisions of Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of the dwellinghouse, other than any hereby permitted or approved as part of the landscaping scheme required by condition 4.

End of Conditions