



Appeal Decisions

Site visit made on 16 August 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 October 2022

Appeal A Ref: APP/U1105/W/22/3294599

Greenhayes, Road from Little Pacehayne to Park Cottage, Shute EX13 7QE

- 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 David Mortimer against the decision of East Devon District Council.
 - The application Ref 22/0041/FUL, dated 10 January 2022, was refused by notice dated 23 February 2022.
 - The development proposed is conversion of redundant agricultural building to form 1 no dwellinghouse, demolition of adjacent metal shed, provision of associated parking area and planting of new native hedgerow.
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Appeal B Ref: APP/U1105/W/22/3294600

Greenhayes, Road from Little Pacehayne to Park Cottage, Shute EX13 7QE

- 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 David Mortimer against the decision of East Devon District Council.
 - The application Ref 21/2137/FUL, dated 9 August 2021, was refused by notice dated 7 October 2021.
 - The development proposed is conversion of redundant agricultural building to form 2 no dwellings (for holiday accommodation purposes) and provision of associated parking.
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Decisions

1. Appeal A is allowed and planning permission is granted for conversion of redundant agricultural building to form 1 no. dwellinghouse, demolition of adjacent metal shed, provision of associated parking area and planting of new native hedgerow at Greenhayes, Road from Little Pacehayne to Park Cottage, Shute, EX13 7QE, in accordance with the terms of the application, Ref 22/0041/FUL, dated 10 January 2022, subject to the conditions in the attached schedule.
2. Appeal B is allowed and planning permission is granted for conversion of redundant agricultural building to form 2 no. dwellings (for holiday accommodation purposes) and provision of associated parking area at Greenhayes, Road from Little Pacehayne to Park Cottage, Shute, EX13 7QE, in accordance with the terms of the application, Ref 21/2137/FUL, dated 9 August 2021, subject to the conditions in the attached schedule.

Preliminary Matters

3. The appeal proposals concern the same barn but for its conversion to either a single dwelling (Appeal A) or two units of holiday accommodation (Appeal B).

Due to the commonalities between them, some aspects of the appeals have been dealt with together.

4. During consideration of the appeals, the '*Housing Monitoring Update to 31 March 2022*' (Monitoring Update) (August 2022) was brought to my attention by the appellant. The Council were provided with an opportunity to comment on the implications of the same in relation to the appeals.

Main Issues

5. In respect of both appeals, the main issue is whether the location of the development accords with local and national policies that seek to restrict development in the countryside and reduce the need to travel by private car.

Context

6. The appeal building is a single storey, rectangular plan building with a pitched roof. Its external walls are of a stone construction with timber-cladding on the upper parts. The building has a number of glazed openings and stable-style doors. Despite its alleged former use having involved the keeping of horses, some alterations appear to have been made to the building that have domesticised its appearance and function. At the time of my visit, it did not appear to be in use other than for limited miscellaneous storage purposes.
7. The site and the surrounding area fall within the East Devon Area of Outstanding Natural Beauty (AONB). In terms of its wider location, the site is situated around 4.5km south of Colyton, c.6k m west of Axminster and around 9km to the east of Honiton. The A35 main road is approximately 500m to the north, although its limited café-style facilities would be a walk of around 800m or more from the site along roads which do not have footways designed for such. The nearest small settlement of Shute has a primary school, but is still around a drive of 2km from the appeal site.
8. In terms of neighbouring properties, the nearest houses scattered in the wider periphery are around 90m or more away. In this sense, and given its location away from a settlement as well, the building is in a rural location and the fact that it is in an isolated context is agreed between the parties.

The Proposals

9. Appeal A seeks to convert the building to a single dwelling with two bedrooms. Appeal B seeks to convert the building into two holiday units, each with a single bedroom. Neither scheme would involve extending the building, but alterations are proposed within both schemes to recover the roof with slate, change a number of window and door openings, provide a small, raised terrace to the rear and renew the timber cladding on the upper external walls. Both schemes would involve some degree of external landscaping, including the demolition of a store to create parking areas.

Reasons – Both Appeals A and B

10. The reasons for refusal of both Appeals A and B list the same policies of the *East Devon Local Plan 2013 – 2031* (EDLP), with the exception of Policy E16, which is specific to tourist accommodation. The officer report for Appeal B also references Strategy 33 relating to tourism.

11. Strategy 5B of the EDLP sets out that development should be of a form, incorporate proposals for and be at locations where it will encourage and allow for efficient, safe and accessible means of transport. Its emphasis is on minimising the overall impact on the environment. Similarly, EDLP Policy TC2 sets out that development should be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.
12. Strategy 7 of the EDLP sets out that outside of the defined build-up area boundaries (BUABs), development is within the countryside and will only be permitted where in accordance with a specific local or neighbourhood plan policy and where it would not be harmful against other specified criteria. There is no neighbourhood plan for the area in question.
13. Policy D8 of the EDLP deals with the reuse of buildings outside of BUABs, and indicates, amongst matters largely agreed by the parties, that such conversions will be permitted where “...*The new use is sympathetic to, and will enhance the rural setting and character of the building and surrounding area and is in a location which will not substantively add to the need to travel by car*”. The Council consider that Policy D8 equally applies to holiday uses as they also fall into a residential use under Use Class C3¹. I do not disagree with this point.
14. I deal with the more straightforward matter of whether either proposal would enhance the character of the building and its rural setting first, given the similarities between the schemes.
15. Both would actually involve limited interventions to the building itself, given its substantial construction and suitability for either intended uses without such. There would be a minor enhancement from the removal of an associated open storage barn, the improvement of the garden and provision of landscaping. The introduction of an active use would also lift its appearance and result in the building having more of a presence within its setting, which I do not regard would be harmful. I have considered the likelihood of domestic paraphernalia having an effect on the local character, but do not consider that this would be harmful in the context of the building’s past uses and associated paraphernalia in any event. As such, in my view, either scheme would adequately enhance the rural immediate setting and character of the building, even if only minimally.
16. The issue of whether either scheme would result in a substantive need to travel by car is dealt with separately below, though the Council appear to acknowledge that the scale of the respective schemes is limited and would not result in significant vehicle movements in any event.

Location of Development – Appeal A

17. EDLP Policy D8 seeks to ensure that converted rural buildings are located so as to be accessible by sustainable means of transport in order to minimise the need to travel by private car. As already set out, the building is not located where a reliance on private vehicle could be avoided. Consequently, the proposal would not accord with EDLP Policy D8, nor as a result, Strategy 7. For reasons also relating to its unsustainable location, the proposal would also fail to accord with Strategy 5B and Policy TC2.

¹ Use Class C3 of the Town and Country Planning (Use Classes) Order 1987

18. The appellant alleges that the locational requirement of Policy 5B is in conflict with the National Planning Policy Framework (2021) (the Framework), which indicates in Paragraph 80 that isolated homes in the countryside should be avoided *unless* one or more of the stated criteria apply. The relevant criterion is "...c) *the development would re-use redundant or disused buildings and enhance its immediate setting...*". So an exception is made for isolated homes that would be created from the reuse of a redundant or disused building where there would be an enhancement.
19. By stipulating that rural conversions shall not substantively add to the need to travel by car, Policy D8 adds another a requirement which undermines the purpose of the exception granted by Paragraph 80 of the Framework. It does not add more detail about how the Framework should be applied, it prevents the exception applying to a large number of rural buildings, which, by their nature, are more likely to be in areas not well served by public transport or suitable walking or cycling facilities.
20. I accept that not all rural buildings will result in car reliance, where perhaps located on the periphery of a settlement, and that this should attract additional weight in favour of the reuse of such well-located buildings, but for the most part, an understanding of what can be achieved in rural areas with pre-existing rural buildings is necessary, as also set out in the Framework².
21. The point is made by the Council that the current Local Plan was examined in the context of earlier versions of the Framework which were relatively similar in setting out how developments in the countryside should be treated. From the evidence provided, I do not disagree that this Policy, despite having been renumbered in the various iterations (2012, 2018, 2019 and current), has remained largely consistent and caselaw has confirmed the same³. I also acknowledge that a policy document or policy should not automatically be treated as out-of-date because it predates the current version of the Framework.
22. However, the Braintree case⁴ has since clarified the application of national policy to isolated buildings. Additionally, some time has elapsed since the examination of the Local Plan which has affected its relevance considered in the context of what its policies have achieved or prevented in the intervening period. I acknowledge that some appeal decisions, including an aged one of my own, may have agreed that Policy D8 and the Framework are consistent, but the change in the collective understanding of the constraints to achieving sustainable development over time has affected the materiality of those decisions now. As such, I regard that the conflict between EDLP Policy D8 and the Framework in relation to its locational requirements can only mean that it should be regarded as out-of-date and favour should be given to the Framework policies in this situation.

Location of Development – Appeal B

23. Strategy 33 is a high level tourism policy promoting sustainable tourism in the district. The more specific tourism policy, E16, starts by setting out specific criteria relating to the provision of overnight accommodation within BUABs,

² Paragraphs 84 and 105

³ City and Country Bramshill Ltd v SSHCLG [2021] EWCA Civ 320

⁴ Braintree DC v SSLG Greyread Ltd & Granville Devs Ltd [2017] EWHC 2743 (Admin); [2018] EWHC Civ 610

relating to scale, protection of neighbouring occupiers, parking provision and accessibility by sustainable transport means and maintaining highway safety. The second part of the Policy sets out that: *"Conversion or use of existing buildings in the open countryside, within close proximity to the main farm house or country house, for small-scale holiday accommodation will be permitted where compatible with the above"*.

24. Whilst the appellant may own a dwelling within reasonable proximity of the appeal building, this is not advanced as a farm diversification scheme and nor is it suggested that there would be an ongoing link between the two. In any event, the Policy does not make it clear if such a relationship would be conditioned even if there is close physical proximity.
25. The scale, parking provision and neighbourliness of the scheme is not in dispute between the parties. But, the building is isolated, so whilst it is technically accessible on foot, bike and public transport by generally mobile individuals with some ingenuity, such accommodation is likely to be accessed via private vehicle and is therefore in conflict with this aspect of the Policy. Whilst there are factors that pull in either direction, I find that the proposal is in conflict with, in particular, EDLP Policies E16, TC2 and also Strategy 5B.

Other Matters

26. I note the concerns of local residents that the approach roads to the site are unsuited to either proposal and that they have been the reason behind a previous refusal. I noted that the access roads from the A35 needed to be driven at a low speed, but due to the scale of development proposed and otherwise lightly trafficked nature of the roads, I do not consider that either scheme would have an unacceptable impact on highway safety.
27. Whilst the issue of harm to biodiversity has also been raised by respondents, I note the submission of the ecology reports which indicate the presence of features or species of value and means to mitigate any potential harm and secure enhancements. As planning conditions could be used to employ such means, I do not consider that there would be any harm to biodiversity value.
28. I have considered the potential harm from noise and disturbance from the building on local residents. Either scheme would introduce a form of residential use to the area, the like of which is compatible in such a location in reasonable proximity of neighbouring dwellings. Whilst some degree of disturbance could result from the building being used as holiday lets through the difference in travel patterns and behaviours of guests, the units themselves would be so modest in scale that the number of guests would be limited as a consequence. Thus, I do not consider that either scheme would result in harm to the living conditions of neighbouring occupiers through noise or disturbance.
29. I have considered the potential for the creation of a precedent as has been raised as a concern by other respondents. The appeals appear to result from the existence of a building in the countryside for which policies, both local and national, exist to support a reuse. The circumstances surrounding this particular building are specific to it and any approval for its conversion to an alternative use could not result in a precedent which does not already exist.

Planning Balance – Appeal A

30. The scheme proposed in Appeal A is in conflict with the development plan. However, a most important policy for determining this appeal, EDLP Policy D8, should, in my view, be regarded as out of date. Whilst Policy TC2 and Strategy 5B should not be regarded as out of date, they are not most important policies where rural building reuse is concerned.
31. A separate matter is that the Council has accepted a material change in circumstances relating to its housing land supply which has arisen since the submission of the appeal. The Framework's requirement for a five year supply of housing land to be maintained is well-documented. The *Housing Monitoring Update* sets out that the Council can only demonstrate a 4.68 year land supply.
32. Footnote 8 of the Framework clarifies that policies of development plans are to be regarded as out of date where the local planning authority cannot demonstrate a five year supply of deliverable housing sites. Policy 11 d) of the Framework, otherwise known as the 'tilted balance', clarifies that where the policies most important for determining a proposal are out of date, permission should be granted unless, (i) policies of the Framework protect an area or asset of particular importance, or (ii) where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
33. The site lies within an area of particular importance, given its location within the AONB. However, the scheme in Appeal A would result in a minor enhancement of the site's immediate setting and, thus, would not harm the AONB. Consequently, as set out in Paragraph 11 d) i), policies of the Framework that protect such areas of particular importance do not indicate that permission should be refused.
34. In terms of Paragraph 11 d) ii) and the adverse impacts in relation to Appeal A, I have considered that there would be some harm, but that some degree of harm of this nature is already envisaged by the Framework and reflected in its policies to support rural building reuse even where they cannot be held to be truly sustainably located. This harm is therefore relatively modest. Conversely, the public benefits would result in the reuse of a suitable building and the creation of a dwelling to add to the local housing stock with related social and economic benefits. These public benefits are capable of attracting modest weight in favour of the proposal, particularly considered in the context of the current deficiency in the housing land supply. Therefore, when weighed in the balance, the harm does not significantly and demonstrably outweigh the benefits that would flow from granting permission.
35. In view of the above, I regard that there are clear material considerations to indicate that a decision should be taken other than in accordance with the development plan in relation to Appeal A.

Planning Balance – Appeal B

36. In the absence of any other direction in Strategy 33 or Policy E16, EDLP Policy D8 is a most important policy for determination of Appeal B and I have already identified the conflict between it and the Framework concerning rural buildings.
37. In applying the tilted balance set out in Framework paragraph 11 d), the same conclusion is reached in respect of i), that there are no policies that protect

areas or assets of importance that indicate that permission should be refused. In relation to paragraph 11 d) ii), the harm would arise from the inability to realistically achieve a mode shift towards use of sustainable travel modes by holiday occupants or related service personnel and the necessary vehicle journeys that would generate.

38. The public benefits would result from the economic contribution that would be made by guests to the local area and the related employment opportunities that would derive both directly and indirectly therefrom. Whilst the application form may not acknowledge any direct job creation, there are jobs that two additional holiday units could support through visitor expenditure in the area. In addition, a contribution to the stock of holiday units could ease pressure on the existing housing stock that may otherwise be used for such purposes.
39. Therefore, I conclude that the harm would not significantly and demonstrably outweigh the benefits of Appeal B, when assessed against the policies of the Framework taken as a whole. This is a consideration of such materiality that it indicates that the decision on Appeal B should be taken other than in accordance with the development plan.

Conditions

40. I have considered the suggested conditions put forward by the Council for both schemes in light of policies and advice set out in the Framework and the Planning Practice Guidance respectively. I first deal with the conditions applicable to both, although clearly only one scheme could be implemented.
41. In addition to the statutory time limit for commencement, conditions stipulating the approved plans are necessary in the interests of certainty. In the interests of the character and appearance of the area, conditions are required in connection with the materials of finishes for the building, landscaping of the site and the demolition of the building. The latter condition also requires the provision of parking associated with the building in either scheme which is also necessary in the interests of the free flow of traffic on the highway.
42. In the interests of the biodiversity value of the site and surroundings, conditions are required to ensure that necessary mitigation and enhancement measures are implemented in association with either scheme. For reasons relating to the environmental quality of the area, a condition is necessary to ensure that adequate means of surface and foul water disposal are provided.
43. With specific reference to Appeal B, a condition is necessary to restrict the units to holiday accommodation purposes as they would not be sized or provided for in such a way as to support a high quality living environment to permanently resident occupiers.

Conclusions

44. For the foregoing reasons, Appeal A is allowed.
45. For the foregoing reasons, Appeal B is allowed.

Hollie Nicholls
INSPECTOR

SCHEDULE OF CONDITIONS – APPEAL A

- 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 approved plans listed below:
 - Location Plan, Ref PRO.LP.MORTIM ER Rev 1.1, dated 06.05.21
 - Proposed Site Plan, Ref SP500 Rev 1.1, dated 04.01.22
 - Combined Plans, Ref MORTIMERPRO Rev 1.1, dated 04.01.22
- 3) Notwithstanding any details indicated on drawings hereby approved and prior to their installation as part of the development, a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external elevations and roof of the proposed 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) Prior to the occupation of the dwelling hereby approved the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Details of any hard landscaping proposals including any retaining structures to car parking areas and finished surfacing of such areas.
 - b) Details of a new hedge to be planted on the north-western boundary of the site (to include species mix, size, numbers and density of proposed planting).

The landscaping scheme shall be carried out in the first planting season after commencement of the development unless 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.
- 5) The demolition of the existing metal shed and provision of the car parking spaces as shown on the approved Proposed Site Plan, Ref SP500 Rev 1.1, shall be completed prior to the initial occupation of the dwelling hereby approved and the parking spaces shall thereafter be retained and maintained for their intended purpose.
- 6) Development shall proceed in accordance with the recommendations of the submitted Bat and Protected Species Survey, Bat Emergence Survey and Bat Activity Survey Report prepared by EcoLogic Consultants Ltd. dated July 2021. The identified ecological mitigation, compensation and enhancement measures shall be carried out in full and written confirmation of this, from the appointed ecological consultant, provided to the Local Planning Authority prior to the initial occupation of the dwelling. The mitigation, compensation and enhancement measures shall thereafter be retained.
- 7) The dwelling hereby permitted shall not be occupied until works for the disposal of sewage and surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

SCHEDULE OF CONDITIONS – APPEAL B

- 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 approved plans listed below:
 - Location Plan, Ref PRO.LP.MORTIM ER Rev 1.1, dated 06.05.21
 - Proposed Site Plan, Ref SP500 Rev 1.3, dated 06.05.21
 - Combined Plans, Ref MORTIMERPRO Rev 1.2, dated 12.03.21
- 3) Notwithstanding any details indicated on drawings hereby approved and prior to their installation as part of the development, a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external elevations and roof of the proposed 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) Prior to the occupation of the units hereby approved the following shall be submitted to and approved in writing by the Local Planning Authority:
 - a) Details of any hard landscaping proposals including any retaining structures to car parking areas and finished surfacing of such areas.
 - b) Details of a new hedge to be planted on the north-western boundary of the site (to include species mix, size, numbers and density of proposed planting).

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 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.
- 5) The demolition of the existing metal shed and provision of the car parking spaces as shown on the approved Proposed Site Plan, Ref SP500 Rev 1.1, shall be completed prior to the initial occupation of the units hereby approved and the parking spaces shall thereafter be retained and maintained for their intended purpose.
- 6) Development shall proceed in accordance with the recommendations of the submitted Bat and Protected Species Survey, Bat Emergence Survey and Bat Activity Survey Report prepared by EcoLogic Consultants Ltd. dated July 2021. The identified ecological mitigation, compensation and enhancement measures shall be carried out in full and written confirmation of this, from the appointed ecological consultant, provided to the Local Planning Authority prior to the initial occupation of the units. The mitigation, compensation and enhancement measures shall thereafter be retained.
- 7) The units hereby permitted shall not be occupied until works for the disposal of sewage and surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

- 8) The units of holiday accommodation hereby approved:
- i. shall be occupied for holiday purposes only;
 - ii. shall not be occupied as a person's sole, or main place of residence;
 - iii. occupation of the units must not exceed 60 consecutive days and there must be a minimum gap of 30 days before the units can be reoccupied by the same visitor/s
 - iv. the owners/operators shall maintain an up-to-date register of the names of all occupiers of the holiday accommodation and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.