



Appeal Decision

Site visit made on 14 June 2022

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **11th October 2022**

Appeal Ref: APP/K1128/W/22/3290232

5 Pennywell Close, Landscope, Ashburton, Devon TQ13 7LZ

- 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 Mrs Joanna Reece against the decision of South Hams District Council.
 - The application Ref 0364/21/FUL, dated 21 February 2021, was refused by notice dated 19 August 2021.
 - The development proposed is change of use of agricultural land to residential curtilage – 0.124 acre.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural land to residential, at 5 Pennywell Close, Landscope, Ashburton, Devon TQ13 7LZ in accordance with the terms of the application, Ref 0364/21/FUL, dated 21 February 2021, subject to the conditions set out in the Schedule at the end of this decision.

Preliminary Matters

2. The description of development used in the application form refers to proposed residential curtilage, but 'curtilage' is not a land use. In my decision, I have therefore adopted the description in the Council's decision notice, which more accurately describes the proposal. I have determined the appeal as being for residential use.
3. Although only two plans have been referenced in the Council's suggested plans list condition, I have a third before me (entitled Garden Site Plan¹). As this is very similar to the other plans, identifying the same area of land, and the Council has not objected to a condition making reference to it, my consideration of this plan would not prejudice any interested party.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - Best and Most Versatile (BMV) agricultural land;
 - The South Hams Special Area of Conservation (SAC), with particular regard to Greater Horseshoe Bats; and

¹ Reference TQRQM21030135057634

- The living conditions of the occupiers of 6 Pennywell Close in respect of outlook and privacy.

Reasons

Character and Appearance of the Area

5. The site is a parcel of land to the rear of 5 and 6 Pennywell Close, a row of houses on the edge of the village. I understand that the site and those of adjoining properties were formerly part of the adjacent large field, having been segregated from it by post and rail fencing, giving a consistent and strongly defined boundary. The surrounding area consists of gently rolling countryside, with no particularly distinctive features and no special landscape designations, but it has a pleasant, rural and edge-of-settlement feel.
6. By wrapping around the rear garden of No 6, the extent of the residential area proposed would be larger than those of surrounding properties. Even so, its proportions and the degree of encroachment of residential use would be small, relative to the field. I have no evidence to suggest that the land taken from the field into adjacent properties' gardens is unlawful and the proposal would maintain the current strongly defined and consistent boundary. As such, it would not create an anomalous change to the field pattern.
7. The site is not prominent from public viewpoints. Additional soft landscaping to the site boundaries would help to mitigate the effects of proposal and result in a moderate visual benefit compared to its existing appearance. On this basis, the proposed intensive domestic use of the area, including associated paraphernalia such as washing lines and children's play equipment, would not have an unduly harmful effect on the character of the landscape. The erection of permanent structures, which could cause landscape harm, can be controlled by way of a planning condition, to ensure that the proposal would not have a harmful visual impact.
8. The proposal would be closely associated with the adjacent dwelling and so would not cause harm by reason of its remote location. For the reasons given above, I therefore conclude that the proposal would result in a moderate enhancement to the immediate setting of the site, and so would have a positive effect on the character and appearance of the area.
9. As such, it would comply with policies TTV1, TTV2, TTV26 and DEV23 of the Plymouth and South West Devon Joint Local Development Plan, adopted March 2019 (JLDP). JLDP Policies SPT1 and SPT2 have also been referenced in the evidence before me but they are not directly relevant to my reasoning on this main issue.

Agricultural land

10. The land is used as an orchard and vegetable plot, but is of a small size relative to, for example, the adjoining field. I have little evidence of its specific agricultural grade. However, other than providing for the occupiers of the dwelling itself, its size means that it makes little meaningful or potential contribution to agriculture.
11. Given its limited contribution, I am therefore satisfied that the proposal would not have a harmful effect on BMV agricultural land. It would therefore comply with JLDP Policy DEV2, SPT1 and paragraph 174 of the National Planning Policy

Framework (the Framework), which seek to protect and safeguard the long-term potential of BMV land.

SAC – Greater Horseshoe Bats

12. The site lies within the Sustenance Zone and wider Landscape Connectivity Zone associated with Greater Horseshoe Bats within the Buckfastleigh Caves roost, part of the SAC. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal.
13. The SAC qualifying features include foraging and commuting of the Greater Horseshoe Bat population. No evidence has been provided, such as a survey from a suitably qualified ecological consultant, to demonstrate the likelihood of use of the site by Greater Horseshoe Bats for foraging or commuting, or the impact of the proposal on them. As such, alone and in combination with other development, the proposal is likely to have a significant effect on the SAC.
14. Nevertheless, I have sought advice from Natural England who comment that given its small size, the risk of the integrity of the SAC being detrimentally affected by the proposal appears to be low. I have assessed whether the proposal could result in impacts on the foraging habitat and commuting routes of the bats, for example by the removal of cattle grazed pasture, lengths of hedgerow or trees, or from the introduction of artificial lighting.
15. However, none of these form part of the proposal and planning conditions could be used to prevent the exercise of permitted development rights, including for small wind turbines and artificial lighting, to ensure that favourable conditions for bats are maintained. The information before me indicates that the impact of the development could be mitigated by the imposition of and adherence to planning conditions. This would avoid adverse effects on the integrity of the SAC and would therefore accord with the Habitats Regulations.
16. I therefore conclude that the proposal would have a neutral effect on the SAC, with particular regard to Greater Horseshoe Bats. As such, it would comply with Policies SPT12 and DEV2 of the JLDP, which require no adverse effect on the integrity of a European Site and avoiding harmful impacts on existing features of the natural environment. For similar reasons, the proposal would not result in harm to biodiversity and so would comply with the Framework.

Living Conditions

17. The site lies behind the existing garden of No 6, which currently has a view of the existing area and the field beyond. The proposal would result in the area having a more domestic appearance. However, no buildings are proposed, and the proposal would not result in an unduly harmful outlook for the occupiers of No 6, who have a wide outlook that already includes views of the rear gardens of adjacent dwellings, with some degree of mutual overlooking between gardens already in existence.
18. The use of the appeal site by the occupiers of No 5 for residential use would not result in intrusive views into the rear garden of No 6, particularly given the screening effect of existing boundary treatments. As such, the living conditions

of No 6 in respect of outlook and privacy would not be harmed. The proposal would therefore comply with Policies DEV1 and DEV2 of the JLDP, which require that new development provides satisfactory privacy and outlook for existing residents and does not cause unacceptable risk to the living conditions of occupiers.

Other Matters

19. I have considered the proposal on its own merits, and so it would not set an undesirable precedent.
20. The site is close to Woolston House, a Grade II listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest.
21. In determining the application, the Council did not identify any harm to the listed building or its setting. Given the distance of the proposal from the listed building and the presence of existing domestic gardens, the setting would not be altered, and I see no reason to disagree with the Council's assessment in this respect.

Conditions

22. 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). I have also sought comments from both parties in respect of the conditions, which I have taken into account.
23. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans is necessary for certainty. I am conscious of the PPG's advice² that the blanket removal of freedoms to carry out small scale domestic alterations is unlikely to be reasonable or necessary. However, in the interests of the character and appearance of the landscape, and of the protecting SAC, it is necessary to remove permitted development rights for outbuildings, small wind turbines, hard boundary treatments and similar structures within the area.
24. In the interests of the protecting SAC, it is also necessary to ensure that there is no external artificial light in the area is controlled. A condition is necessary for the provision of soft landscaping, to maintain and enhance the character and appearance of the area. This must be a pre-commencement condition, because there is no other point at which this information could be provided.

Conclusion

25. For the reasons identified above, the proposal would comply with the Development Plan, and so I conclude that the appeal should be allowed.

O Marigold

INSPECTOR

² Paragraph: 017 Reference ID: 21a-017-20190723

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: TQRQM21052125938018, TQRQM21052130643060 and TQRQM21030135057634.
- 3) 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, no building, enclosure, swimming or other pool building; container used for domestic heating purposes/oil or liquid petroleum gas; hard surface; gate, fence, wall or other means of enclosure, or any stand-alone wind turbine shall be erected within the extended residential area as outlined in red on drawing TQRQM21030135057634.
- 4) No means of external artificial lighting shall be installed within the extended residential area hereby approved unless it is installed and operated accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority.
- 5) The garden area shall not be brought into use until detailed plans of a landscaping scheme, including the boundary treatments, have been submitted to and agreed in writing by the Local Planning Authority. The landscaping shall be implemented in accordance with the agreed scheme and shall take place in the next available planting season after the scheme is agreed by the Local Planning Authority.

End of Conditions