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## Appeal Decision

Site visit made on 27 October 2022

**by L Page BSc (Hons) MSc MRTPI**

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

**Decision date: 14<sup>th</sup> November 2022**

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**Appeal Ref: APP/U1105/W/22/3300692**

**87 Sidford High Street, Sidford EX10 9SA**

- 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 P Aldam against the decision of East Devon District Council.
  - The application Ref 20/2653/FUL, dated 26 October 2020, was refused by notice dated 23 December 2021.
  - The development proposed is demolition of the existing dwelling and redevelopment of the site to provide four dwellings and a new vehicular access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The appellant has agreed to the change in the description of development made by the Council, which is reflected in the banner heading of this decision. The appeal has been considered accordingly.
3. The appellant submitted new evidence relating to biodiversity enhancement measures. The Council and other interested will have had an opportunity to comment on this new evidence under the appeal and it has been accepted on this basis.
4. It would appear that in light of this new evidence the matters in dispute have been narrowed to include the presence or absence of dormice and reptiles, and potential loss of their habitat. This has framed the main issue and my assessment of the proposal.
5. The Cranbrook Development Plan Document was adopted by the Council on 19 October 2022. The parties were given an opportunity to comment on any implications for the matters being considered under the appeal. It was subsequently confirmed there were no implications.
6. A Screening Direction issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations) established that the development is not EIA development, and the appeal has been considered accordingly.

### Main Issue

7. The main issue is the effect of the proposal on the protected species of dormice and reptiles.

## Reasons

8. The site is located on land at 87 Sidford High Street, it is heavily overgrown and includes substantial areas of rank grassland and bramble scrub. The Council considers this would be suitable habitat for reptiles and dormice. They also consider that the site is well located adjacent to other potentially suitable habitat within the garden areas of other dwellings nearby and have identified biodiversity records of dormice and reptiles within 80m of the site. Altogether, they consider these factors would give rise to the protected species being present on the site.
9. The appellant suggests that a change in the local landscape, including at the site subject to the Persimmon Homes development, has reduced the likelihood of the protected species being present on the site. I accept urbanisation and the loss of larger areas of habitat are legitimate considerations and may have affected populations of the protected species in the immediate locality. However, the biodiversity records identified by the Council would suggest that the protected species could still endure in the area, perhaps in smaller gardens and other areas in close proximity to the site. Consequently, whilst there are some intervening hard boundary treatments, interconnectivity with the site cannot be ruled out.
10. Considering that the site has clearly evolved over the course of several years, from a sterile garden area into a relatively more suitable rank grassland and bramble scrub environment, it seems reasonable that the potential for the protected species has also increased in relative terms. As such, despite some limited management in the intervening period and the possibility of sub optimal areas within the site itself<sup>1</sup>, if other garden areas of a more kempt and sub optimal nature can give rise to records of the protected species, I see no reason why the site in this case would not be likely to support the protected species either.
11. In the absence of recognised guidance definitively ruling out the suitability of rank grassland and bramble scrub I feel my conclusions on this point are reasonable. In a similar context, whilst I acknowledge the appellant's contention that there might be insufficient dormouse habitat to conduct meaningful surveys, I have no recognised guidance in front of me to allow such a conclusion to be drawn.
12. In considering the above, I am mindful of Paragraph 99 of Circular 06/2005, which states that the reasonable likelihood of a protected species being present is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, "... is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".

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<sup>1</sup> such as the northern hedgerow to Sidford High Street, which appears isolated and closed off with fencing

13. There are multiple interlinked factors including habitat on site, potential nearby habitat, biodiversity records and potential connectivity, which when taken cumulatively persuade me that there is a reasonable likelihood of the protected species being present on the site. Consequently, presence or absence surveys<sup>2</sup> are required for both dormice and reptiles in order to determine the effects<sup>3</sup> of removing the substantial areas of rank grassland and bramble scrub and comprehensively engage with the mitigation hierarchy in accordance with Paragraph 180 of the National Planning Policy Framework<sup>4</sup>, Planning Practice Guidance and other relevant information sources<sup>5</sup>.
14. The appellant makes the point that they are free to manage the vegetation outside the confines of the planning system due to the lawful use of the dwelling and lack of protection for the type of vegetation. Whether this is the case or not, they would still be bound by legal duties relating to protected species. As such, the ability to manage the vegetation would be limited in this context and would not therefore be comparable to the substantial loss that would occur as a result of the proposal. Consequently, the matter does not represent a fallback position of any more than limited weight in its favour.
15. Whilst I acknowledge and appreciate the appellant's ecologist's general experience, and indeed personal experience with the site and locality over many years, it is still important for me to follow the facts of each case, including any recognised guidance or lack thereof.
16. Overall, there is insufficient evidence to demonstrate that the proposal would have an acceptable effect on the protected species of dormice and reptiles. Therefore, it would conflict with Policy EN5 of the East Devon Local Plan 2016, which among other things sets out that wherever possible sites supporting important wildlife habitats or features not otherwise protected by policies will be protected from development proposals which would result in the loss of or damage to their nature conservation value.

### **Other Matters**

17. There is no recognised metric analysis demonstrating that there would be a net gain in biodiversity over and above the existing baseline. Therefore, such matters would not weigh in favour of the proposal in this case.
18. Whilst I note the planning history of the site, the full details of each application, including the biodiversity evidence submitted therein, are not in front of me to determine their relevance or the context within which planning conditions were considered. As such, I have given the planning history of the site limited weight in my decision.
19. Correspondence between the appellant and the Council during the course of the application would have been conducted in good faith and without prejudice to the Council's ultimate decision on the planning application.

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<sup>2</sup> noting the distinction between site walkover surveys providing preliminary 'phase one' characteristics of a site's habitats, and the need for more detailed 'phase two' presence or absence surveys for each protected species.

<sup>3</sup> the degree of presence or absence is fundamental in determining the extent of the proposal's effects and whether significant harm would exist or not.

<sup>4</sup> it would not be right for me to speculate about the acceptability of mitigation or compensation measures such as the need for layout changes or translocation, or the potential for conditions therein, without more detailed 'phase two' presence or absence surveys.

<sup>5</sup> such as those identified in the appellant's appendices relating to protected species advice and decision making checklists, among other things.

20. Paragraph 11(d) of the National Planning Policy Framework and the presumption in favour of sustainable development is not engaged in this case. Consequently, it does not provide a material consideration with which to decide otherwise than in accordance with the development plan.
21. Whilst the proposal would contribute to housing land supply and there would be socio-economic benefits derived from construction, the scale of housing delivery would be limited. Consequently, these benefits would carry limited weight in favour of the proposal and have not been determinative under the appeal.
22. Trees would be lost under the proposal and retained trees would soften the built form. This would be a neutral factor under the appeal and not something that would outweigh the harm identified under the main issue.

### **Conclusion**

23. For the reasons given, the appeal is dismissed.

*Liam Page*

INSPECTOR