



Appeal Decision

Site visit made on 11 July 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/Y1138/W/23/3316553

Langlands Farm, New Buildings, Sandford EX17 5PA

- 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 J Sanders against the decision of Mid Devon District Council.
 - The application Ref 22/02140/FULL, dated 4 November 2022, was refused by notice dated 22 December 2022.
 - The development proposed is erection of 5 dwellings following demolition of existing barns.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 5 dwellings following demolition of existing barns at Langlands Farm, New Buildings, Sandford EX17 5PA in accordance with the terms of the application, Ref 22/02140/FULL, dated 4 November 2022, subject to the attached schedule of conditions.

Main Issues

2. The main issues are (i) whether the site is a suitable location for the proposed development, having regard to the relevant development plan policies and previous decisions; and (ii) the effect of the proposal on the character and appearance of the area.

Reasons

Location

3. The appeal site lies in an exposed and isolated position in the open countryside approximately 2km from the nearest settlement. Policies S1 and S14 of the Mid Devon Local Plan 2013-2033, July 2020 (LP) focus development towards the most sustainable settlements, thus reducing the need to travel by car and minimising impacts on biodiversity and the natural environment. In the countryside, development is restricted, amongst other things, to affordable and low cost housing to meet local needs, replacement dwellings or essential accommodation for rural workers. There would be conflict with these policies insofar as the development would not provide a type of housing identified above, and given its location, would not reduce the need to travel by car to access services. This would also be consistent with paragraph 80 of the National Planning Policy Framework (the Framework). I will deal with the fallback later in this decision.
4. I therefore conclude on this main issue that the site is not normally a suitable location for the proposed development having regard to the provisions of national and local policy and its accessibility to services. For the above reasons,

the development would be in conflict with policies S1 and S14 of the LP. There would also be conflict with paragraph 80 of the Framework.

5. The appellant has drawn my attention to a potential fallback position relating to a previous permission on the site, the implications of which I consider below.

Character and appearance

6. The Council accepts that the planning permission would have a greater prominence than the agricultural buildings from the adjacent lane and in the wider landscape. I have no reason to disagree. Whilst the planning permission is of a single storey internal layout, the proposed development would be of an identical scale and design, save for the additional rooflights and very minor window additions. By their very nature, the proposed additional rooflights would be positioned at angles on the roof slope which would reduce any perceived cumulative visual harm when read against the ground floor windows. Although numerous, the rooflights would be of relatively small scale and positioned with a vertical emphasis which would maintain symmetry to the overall fenestration layout, rather than appearing cluttered or dissenting.
7. At my visit, I observed the existing agricultural barn at the appeal site included a number of large rooflights, which are commonplace within such buildings. Therefore, even though the development would be of a contemporary format, the agricultural theme, form and character would be maintained with the introduction of these typical features in the rural landscape. Consequently, the presence of the development would not be more obvious and the eye would not be drawn to the additional fenestration any more than it would be towards the planning permission. As such, the additional fenestration would not appear incongruous with the overall design of the buildings when viewed from the adjacent lane or wider landscape and would be sympathetic to local character as promoted within chapter 12 of the Framework.
8. Therefore, I conclude on this main issue that the proposal would have an acceptable effect on the character and appearance of the area. As such, the proposed development would not conflict with Policy DM1 of the LP which, amongst other things, supports developments that have a clear understanding of the characteristics of the site, its wider context and the surrounding area, making efficient and effective use of the site. There would also be no conflict with paragraph 130 of the Framework which says that decisions should ensure that developments are sympathetic to local character.

Other Matters and Planning Balance

Fallback

9. Prior approval was previously granted in 2022 under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (Class Q) on the appeal site for the conversion of an agricultural building to 5 dwellings (the prior approval). As an extant permission, I am satisfied this represents a material consideration that can be afforded substantial weight.
10. There is also a more recent extant planning permission¹ granted in 2022 (the planning permission) for 5 dwellings on this site which would replace the barn

¹ Planning reference 22/00459/FUL

that is subject to the prior approval. With a larger floorspace than the prior approval, the planning permission represents a material consideration that can be attributed more significant weight. In respect of the prior approval and the planning permission (the fallbacks), based on the evidence before me, there is a real prospect that either development would be carried out.

11. The Council has concerns that the development would represent an incremental increase in floorspace across all applications, which is noted. However, although the development would increase the floorspace to almost double that of the prior approval, the planning permission also allows for a substantial increase in floorspace above that granted with the prior approval. As such, whilst the conditions and limitations of Class Q are recognised, the comparative increase in floorspace between the planning permission and the proposed development is the most relevant material consideration.
12. In that context, although approximately 465sqm additional floorspace would be created across the whole scheme, it would be wholly within the roof spaces and would amount to 1 additional bedroom per unit. Additionally, although certain permitted development rights have been removed with the planning permission, additional floorspace could be achieved without the benefit of a new planning permission. Even if new fenestration was required to facilitate additional floorspace, thus triggering the requirement for a new planning permission, I have already concluded above that these would not be harmful. In any case, the scheme before me would result in a similar overall scale of development to that already approved.
13. There are no controls on the occupancy of the fallbacks. The additional bedrooms proposed here could, of course, result in increased occupancy on the site. However, it is unlikely that either scheme would ever be occupied to their absolute maximum level. It is reasonable to assume that numbers of residents across the site would also vary over time. There is no guarantee therefore that the development would definitely lead to a greater number of occupants at all times, particularly considering the permitted development situation described above. Nevertheless, even if trips and activity associated with this proposal were higher than that of the fallbacks, they are unlikely to be of a scale that would result in any material impact or harm in respect of overall vehicle movements, pressures on local facilities or nature and biodiversity.
14. Drawing these matters together, ordinarily, these new properties in this location would not comply with the Council's housing strategy for development in the countryside, and the advice set out in the Framework in this respect. However, section 38(6) of the Planning and Compulsory Purchase Act 2004 says planning decisions must be made in accordance with the plan unless material considerations indicate otherwise. I do not consider that the proposed development would amount to a substantial variation to the planning permission in respect of its increased floorspace or any intensification of the use of the site as set out above. As such, the development would be similar to the planning permission and would not result in additional harm. On that basis, the extant permission represents a material consideration of significant weight that indicates these policies can be set aside in this case.

Conditions

15. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the PPG and the Framework.
16. In the interests of clarity, standard conditions requiring the development to be carried out in accordance with the plans and within a time limit have been imposed. To maintain the character and appearance of the area, conditions are imposed to ensure landscaping and materials details are agreed with the Council. A contamination condition is required to deal with unexpected contamination. Surface water and surfacing details are required in the interests of drainage and highways safety. An ecological compliance condition is necessary in the interests of biodiversity.
17. The PPG says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Despite the main issues that are the subject of this appeal, there is no substantive evidence to demonstrate that the blanket removal of freedoms to carry out small scale alterations is reasonable or necessary in this instance. I have therefore not imposed the Council's suggested condition for the removal of certain permitted development rights.
18. I have not imposed the Council's suggested construction management plan condition due to the small scale of the development. I have also not imposed the Council's suggested surface water condition as it is not sufficiently precise or enforceable.

Conclusion

19. As set out above, there are material considerations in this case which indicate a decision should be made other than in accordance with the development plan. For this reason, I conclude that the appeal should succeed.

J Hills

INSPECTOR

Schedule of Conditions

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 following approved plans: Site Location Plan - 04.Sanders.02SV; Proposed Site Plan – 21.004.05PL A; Proposed Dwelling Type A – 21.004.06PL; Proposed Dwelling Type B – 21.004.07PL; Proposed Dwelling Type C – 21.004.08PL.
3. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until details have been submitted to and approved in writing by the local planning authority for an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.

4. Prior to the occupation of the dwellings hereby approved, full details of a landscaping plan which will provide details of the planting schedule and maintenance shall be submitted to and approved in writing by the local planning authority. The landscaping shall have been implemented by the next planting season and shall be maintained for a period of not less than 5 years during which time if any plants are lost, they shall be replaced.
5. Prior to the development reaching damp proof course level, full details of the materials to be used on the external surfaces of the development hereby approved shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and maintained as such thereafter.
6. Prior to the occupation of the dwellings hereby approved, the site access road shall be hardened, surfaced, drained and maintained thereafter for a distance of not less than 6 metres back from its junction with the public highway.
7. The development shall be carried out in accordance with the Ecology Report provided by South West Ecology and dated April 2022.