



Appeal Decisions

Site visit made on 31 October 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Ref: APP/Y1138/W/23/3319964

Gilberts Lodge, Road From Hayne Cross To St Georges Church, Morebath, Devon EX16 9DB

- 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 Andrew Moore against the decision of Mid Devon District Council.
 - The application Ref 22/01234/FULL, dated 23 June 2022, was refused by notice dated 2 December 2022.
 - The development proposed is the demolition and replacement of the existing dwelling with a new dwelling, garage/ workshop and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have also dealt with another appeal¹ on this site. That appeal is the subject of a separate decision.
3. Since the Council made its decision, on 5 September 2023, a revised version of the National Planning Policy Framework (the Framework) has been issued. However, the only substantive revisions relate to national policy for onshore wind development in England, and the changes to national planning policy do not materially affect this appeal. I have taken the Framework into account in reaching my decision.
4. The description of development in the banner heading above is taken from the planning application form, albeit with superfluous information not referring to an act of development removed.

Main Issue

5. The main issue is whether the proposed development would be a suitable replacement dwelling in the countryside, having regard to the development plan's rural development policies, with particular regard to the size of replacement dwellings in the countryside.

Reasons

6. The appeal site is an attractive former agricultural building, which has been converted to a dwelling. It lies in a countryside location. The dwelling's accommodation includes two bedrooms, a bathroom, kitchen, lounge and dining room, utility, hall and W.C.

¹ APP/Y1138/W/23/3328520

7. The Mid Devon Local Plan 2013-2033 adopted 2020 (the LP) seeks to concentrate growth on the district's most sustainable settlements of Tiverton, Cullompton and Crediton, with long-term growth to the east of Cullompton and a limited level of development in villages. As part of this approach, Policy S14 of the LP requires that development in the countryside will be restricted to, amongst other things, replacement dwellings. The supporting text to the policy states that development in the countryside will be managed to promote vibrant rural communities, as well as other things.
8. Policy DM10 of the LP details the parameters for which proposals for replacement dwellings in rural areas should be considered. The policy requires that the replacement dwelling's floorspace will be no greater in size than the existing dwelling, taking into account any unspent permitted development rights. The policy's supporting text advises that this is to ensure that the character and amenity of the area are not harmed, and the rural dwelling stock remains affordable for local residents.
9. The proposal would entail the replacement of a relatively modest dwelling with a large four bedroom detached house and a large outbuilding. Compared to the existing building, the proposed dwelling would be more than three times larger than the existing floorspace. There is little evidence to show that the increase in the size of the dwelling would not harm the stock of rural dwellings which is affordable for local residents.
10. I have had regard to the *Mansell v Tonbridge*² case quoted by the appellant, and I am cognisant that Policy DM10 of the LP allows the floorspace of any unspent permitted development rights to be taken into account. Moreover, fallback positions involving the use of permitted development rights, or a subsequent planning permission granted by the Council to extend the existing dwelling have been highlighted. The evidence submitted by the appellant in relation to these fallbacks is limited. Whilst various floorspace calculations have been provided, there are no detailed proposals before me to enable a comparison with the appeal proposal.
11. Nevertheless, a condition of planning permission reference 20/00111/FUL removes permitted development rights for development of the types referred to in Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Although the appellant considers that permitted development rights have erroneously been removed from the existing dwelling, as can be seen from my other appeal³ decision, I have found that the condition is reasonable and necessary. Consequently, such permitted development rights are removed from the property and there is no fallback position in this regard.
12. Whilst the appellant also refers to the potential to extend the dwelling via an application submitted to the Council, there is no planning permission for an extension to the building.
13. To be afforded any weight, there must be a real prospect of a fallback position being implemented, i.e. there must be a greater than theoretical possibility that the fallback would take place. In this particular case, there is no detailed information on the nature and context of any alternative proposal that is

² *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

³ APP/Y1138/W/23/3328520

sufficient for me to make a comparison with the appeal proposal. There is no detailed scheme before me or any evidence to demonstrate the likelihood of these alternative proposals being carried out, for example, an existing planning permission for an extension. Given this, there is no substantive evidence of a fallback position involving extensions to the existing dwelling. For these reasons, I afford limited weight to these potential fallback positions.

14. As such, the proposal would result in a replacement dwelling in the countryside that would substantially exceed the floorspace of the existing building. This would fail to meet the requirement of Policy DM10 of the LP for replacement dwellings in the countryside. In so conflicting with LP Policy DM10.
15. Whilst the Council has referred to Policies S14 and DM9 of the LP in its reason for refusal, these set out the strategy for development outside settlements, including the replacement of dwellings, and refer to the conversion of rural buildings. I do not therefore consider LP Policies S14 and DM9 to be determinative in this instance.

Other Matters

16. The appellant has provided details of a range of benefits associated with the development. These include environmental benefits in terms of ecological enhancements and landscaping, and that the proposed dwelling would be highly insulated, designed to meet the ultra-low energy Passivhaus Certified standard, and provide more spacious accommodation with a high-quality design. However, I have no compelling evidence to demonstrate that the scale of the proposed development is the only way such benefits could be achieved.
17. Moreover, even though the policies of the Framework and the development plan require all new development to be of a high quality and to, where possible, secure improvements to existing building form, these are standard development control requirements that would be sought from any new development.
18. My attention has been drawn to several appeal decisions. The appeal examples are located in areas outside the Mid Devon district and their particular context and development proposals are not directly comparable to the scheme before me. In any case, I have considered the development on the evidence presented, and site observations.

Overall Balance and Conclusion

19. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
20. The appellant has provided details of a range of benefits associated with the development. However, the benefits are limited by the scale of the proposed development and would not outweigh the conflict with the development plan. Moreover, there is no substantive evidence of a fallback position involving permitted development rights or a specific planning permission to extend the existing dwelling. I therefore conclude that the proposal would be contrary to the development plan and there are no material considerations identified that outweigh this finding.

21. For the reasons given above I conclude that the appeal should be dismissed.

J White

INSPECTOR