

Appeal Decision

Site visit made on 3 January 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/W1145/W/23/3326777

Annexe, East Hele Farm, Buckland Brewer, Bideford, Devon EX39 5LZ

- 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 D Brown against the decision of Torridge District Council.
 - The application Ref 1/0755/2021/FUL, dated 10 August 2021, was refused by notice dated 5 May 2023.
 - The development proposed is described on the application form as, "Extension to existing annex at East Hele Farm to provide a family home for the applicant".
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Decision

1. The appeal is allowed and planning permission is granted for extension to the Annexe at East Hele Farm and erection of bat barn at Annexe, East Hele Farm, Buckland Brewer, Bideford, Devon, EX39 5LZ in accordance with the terms of the application, Ref 1/0755/2021/FUL, dated 10 August 2021, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed, and written confirmation that a revised description of development has been agreed has been provided. Accordingly, I have considered the appeal on the basis of the description of development given in the Council's decision notice, which is, 'Extension to the Annexe at East Hele Farm and erection of bat barn'.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment and I have taken the comments received into account. I have had regard to the December 2023 version of the Framework in my decision.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the existing building and the local area, and on protected species.

Reasons

Character and appearance

5. The appeal site is located to the south of Buckland Brewer and comprises a farm which includes several large agricultural buildings, a farmhouse and its

associated outbuildings, and the detached building which is the subject of this appeal, known as the Annexe.

6. A Certificate of Existing Lawful Use or Development¹, confirmed an existing lawful use for the Annexe being used as an independent residential dwelling in April 2022, and I have not been provided with evidence which indicates that the Annexe has been subject to any material change of use since then.
7. Due to its height, width, and overall scale in comparison with the farmhouse on site, the Annexe does not appear as being a particularly diminutive or subservient building, either when viewed within the site itself or on approach to the site. This visual effect is reinforced by the prominent position of the Annexe, with the Annexe being sited near the entrance to the site. The noticeable use of several dormers and regularly-spaced windows gives the Annexe a rather domestic appearance. Hence, despite being a former annexe, in terms of its design, scale, and massing, the Annexe appears as one of the principal buildings in non-agricultural use on site.
8. The Council have calculated that the proposed extension to the Annexe would be equivalent to an approximately 300% increase in the size of the Annexe, and this figure has not been disputed by the appellant. The proposed extension, which would broadly duplicate the footprint of the existing Annexe through the creation of a main extension building which would be connected to the existing Annexe via a circulation link, would be, in visual terms, tantamount to the creation of a new dwelling on site.
9. Nevertheless, whilst the Annexe appears to be well-constructed with stone finished walls, a natural slate roof, and red brick detailing, which complements its farmyard setting, the Annexe does not exhibit any especially distinctive architectural or historic features. Indeed, the Council have not referred to any particularly noteworthy features of the Annexe which would be lost or compromised by the proposed development.
10. The proposed extension would closely resemble the existing Annexe in terms of the materials used and its architectural style, including its roof, dormers, and gable end. By way of the incorporation of simple elevational treatments, the proposed extension would complement the rural appearance of the existing Annexe and also nearby buildings, including the farmhouse.
11. As such, although the Annexe as extended would undoubtedly be a much larger building than presently exists, its design would echo the traditional rural aesthetic of the Annexe, whilst also augmenting its existing domestic-like features, referred to above. In this way, the proposed extension would better reflect the present function of the Annexe as an independent residential dwelling in a rural setting, in line with paragraph 44 of the National Design Guide which provides that, amongst other things, it is appropriate to introduce elements that reflect how we live today, to include innovation or change.
12. The wider site contains numerous large and austere agricultural buildings, situated a short distance to the west of the Annexe. Seen in this context, the Annexe as extended, although larger than at present, would not dominate the site, nor would it appear out-of-character, considering the significant scale and massing of many of these nearby buildings.

¹ 1/0441/2021/CPE

13. The site is set well-back from public vantage points. It is common ground between the main parties that the Annexe as extended would have a minimal impact on the landscape, and this is consistent with my observations.
14. The Council have referred to the needs of the future occupiers of the Annexe. However, the proposed extension relates to a seamless extension of an independent residential dwelling intended to be occupied by a single family, rather than to annexe accommodation. Therefore, part (2) of Policy DM25 of the Local Plan² and paragraph 13.138 of the Local Plan are not directly relevant to the proposed development. The Council have also referred to exceptional circumstances in relation to the quantum of development proposed, but this requirement is not present within any of the relevant planning policies. In any event, given the lack of harm identified to the character and appearance of the existing building and the local area, it is not necessary for these matters to be considered further, and they do not change my findings on this main issue.
15. I therefore find that the proposed development would have an acceptable effect on the character and appearance of the existing building and the local area. It would comply with Policies ST04, ST07, DM04, and DM25 of the Local Plan which collectively provide that, amongst other things, development proposals should be appropriate and sympathetic to setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood.
16. The proposed development would also comply with paragraph 135 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Protected species

17. The second reason for refusal in the Council's decision notice refers to insufficient information being submitted to demonstrate the impact of the proposed development on a potential bat roost. In this regard, the Protected Species Survey³ confirmed that bat droppings were found within the Annexe.
18. Bats are a protected species under the Wildlife and Countryside Act 1981 (as amended), and bats are a European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). Circular 06/2005 states that the presence of a protected species 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.
19. The Protected Species Survey recommended that at least 2 bat emergence surveys should be undertaken between May and August. These surveys were carried out in July 2023, as detailed in the submitted Ecological Impact Assessment⁴ (EIA). These surveys did not find any fresh evidence of bat roosts, and no bats emerged from the Annexe during either survey.

² North Devon and Torridge Local Plan 2011-2031 (adopted 2018)

³ Protected Species Survey and Ecological Mitigation Method Statement (Richard Green Ecology Ltd) (March 2021)

⁴ Ecological Impact Assessment (Lakeway Ecological Consultancy Ltd) (July 2023)

20. The EIA notes that the extension of the Annexe will not block access to the bat roosts found at the gable ends or the western dormers, and bats will still be able to access their roosting sites in the loft, post works. The report recommends that tying in the roof, or any other works that impact the east elevation of the Annexe above eaves height should be carried out over winter, when bats are least likely to be present, and that appropriate lighting should be used on site to ensure that no light barriers are introduced to foraging and commuting bats. Planning conditions could be imposed to secure these matters.
21. The latest evidence before me, referred to above, indicates that there is a low probability that bats would be encountered during construction works. With the above-mentioned planning conditions imposed, disturbance to any bat roosts would likely be avoided by the timing of the construction works. In these circumstances, an EPS licence would not be required. A planning condition could also be imposed to ensure that the appropriate procedure is followed if bats are found during construction works.
22. It follows that any potential harm to bats would likely either be avoided or adequately mitigated. I therefore find that the proposed development would not have an adverse effect upon protected species. It would comply with Policies ST14 and DM08 of the Local Plan which collectively provide that, amongst other things, the quality of northern Devon's natural environment will be protected and enhanced by ensuring that development contributes to conserving European protected species and the habitats on which they depend.
23. For the reasons given above, the proposed development would also comply with chapter 15 of the Framework, the Planning Practice Guidance, Circular 06/2005, the Wildlife and Countryside Act 1981 (as amended), the Natural Environment and Rural Communities Act 2006 (as amended), and the Habitats Regulations, which amongst other things, collectively seek to conserve and enhance the natural environment.

Other Matters

24. The proposed 'bat barn' is intended to be constructed on agricultural land. Considering its limited footprint it would not in any way compromise the use of that land for agricultural activities. The fact that it would be situated on agricultural land alone is not a reason for this part of the proposed development to be resisted.

Conditions

25. I have had regard to the conditions suggested by the Council and the appellant, including those submitted by the Council with their Questionnaire and their Statement of Case. I have considered them against the advice on conditions set out in the Framework and the Planning Practice Guidance (PPG).

Conditions imposed

26. Conditions are necessary, in the interests of clarity and enforceability, setting out the timescale for the commencement of development (condition 1) and the approved plans (condition 2), respectively.
27. Paragraph 1.2.2 of the EIA states that an objective of the report is to allow the Local Planning Authority to write planning conditions (where necessary) to

secure mitigation, compensation and enhancement measures. In this regard, paragraph 7.2 of the EIA recommends that traditional bituminous sarking felt must be used for the new extension, to avoid bats becoming trapped within fibres commonly used in modern roofing membranes. A condition is necessary to secure compliance with this recommendation, to ensure that potential harm to bats, which are a protected species, is avoided over the lifetime of the proposed development (condition 3).

28. A condition is necessary requiring the proposed 'bat barn' to be constructed in accordance with the measures detailed in the Protected Species Survey, to ensure that no harm is caused to bats, which are likely to roost within this structure (condition 4).
29. Paragraph 7.2 of the EIA provides recommendations regarding lighting, in relation to the presence of bats foraging and commuting in the vicinity. A condition is necessary requiring details to be submitted to the Council regarding this matter, to ensure that any lighting installed does not cause a barrier to foraging and commuting bats (condition 5).
30. Paragraph 7.2 of the EIA recommends that tying in the roof, or any other works that impact the east elevation of the Annexe above eaves height, should be carried out over winter, when bats are least likely to be present. Considering the known presence of bats in the vicinity, I consider that a condition is necessary regarding the timing of certain construction works, to prevent potential harm to bats (condition 6).
31. Paragraph 7.2 of the EIA recommends that in the event that a bat is discovered or suspected at any point, work must pause and a detailed procedure must be followed. A condition is necessary to secure compliance with this procedure, to ensure that potential harm to bats is avoided (condition 7).
32. A condition is necessary requiring the 'bat barn' to only be used for purposes ancillary to the Annexe, to protect the living conditions of the occupiers of the Annexe and the adjacent farmhouse from potential harms arising should the 'bat barn' be used for non-residential uses, including those that might generate undue noise and disturbance, and also to ensure that the 'bat barn' would not be used for purposes which would be inappropriate in its rural context (condition 8).

Conditions not imposed

33. I have not imposed a condition requiring the control of the external materials since sufficient detail thereof is shown on the approved plans which are covered by a separate condition.
34. Given the secluded nature of the site and the consequent limited potential of the proposed development to impact on the character and appearance of the wider area, it is not necessary for a condition to be imposed requiring details of tree planting and landscaping to be submitted to the Local Planning Authority for their approval.
35. The conditions imposed above would prevent harm to bats, which are a protected species. Although the proposed 'bat barn' would provide further ecological enhancements on site, this structure is not strictly necessary for adverse impacts on bats to be avoided. Hence, it is not necessary for a condition to be imposed requiring this structure to be retained in perpetuity.

36. A soakaway found towards the southern part of the site is shown on the submitted plans, and the evidence before me does not indicate that the proposed development would cause damage to the highway or result in highway safety issues due to the displacement of surface water. Therefore, a condition is not necessary regarding these matters.
37. The Council have suggested a condition removing permitted development rights, firstly in relation to Class AA of Part 1 of Schedule 2 of the GPDO⁵, which relates to the enlargement of a dwellinghouse by construction of additional storeys. However, Class AA is subject to a prior approval procedure, meaning that prior approval could be refused by the Council should any proposed development under Class AA not be acceptable in terms of its external appearance or effect on the living conditions of nearby occupiers. Therefore, a condition restricting the Class AA permitted development right from being exercised in relation to the Annex as extended is not necessary.
38. The Council request that Class B of Part 1 of Schedule 2 of the GPDO should be restricted, which relates to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class B is subject to numerous limitations, including that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof. Considering this, and that the Council have not substantiated their concerns that the operation of Class B would have an adverse impact upon appearance or the living conditions of nearby occupiers, it would not be reasonable for Class B to be restricted in this case.
39. It is not the purpose of this appeal decision to provide a definitive statement as to whether the Annex benefits from a curtilage. I have had regard to the red line boundary shown on the Location Plan⁶, in considering whether the permitted development right under Class E of Part 1 of Schedule 2 of the GPDO should be restricted, which relates to buildings incidental to the enjoyment of a dwellinghouse.
40. The PPG advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity⁷. In this case, few details have been provided to demonstrate how the implementation of Class E could potentially adversely impact the character and appearance of the area and / or the living conditions of nearby occupiers. Taking account of the numerous large-scale buildings present within the wider farm, the secluded nature of the site, and noting that Class E is subject to several limitations, including that development is not permitted by Class E if the building would have more than a single storey, it would not be reasonable for Class E to be restricted.

Conclusion

41. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

⁶ Drawing No. 001 (Rev. 02)

⁷ Paragraph 21a-017-20190723

Conditions Schedule

- 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: Contextual Elevations (Drawing No. 005) (Rev. 01), Proposed Sections (Drawing No. 010) (Rev. 01), Landscape Plan (Drawing No. 009) (Rev. 01), Bat Barn (Drawing No. 008) (Rev. 03), East and West Elevations (Drawing No. 007) (Rev. 01), North and South Elevations (Drawing No. 006) (Rev. 01), First Floor Plan (Drawing No. 004) (Rev. 01), Ground Floor Plan (Drawing No. 003) (Rev. 01), Block Plan (Drawing No. 002) (Rev. 01), Location Plan (Drawing No. 001) (Rev. 02).
- 3) The roof of the extension to the Annexe hereby permitted shall be lined with traditional bituminous sarking felt (Type 1F). The felt shall be retained thereafter.
- 4) The Bat Barn (shown on Drawing No. 008 (Rev. 03)) hereby permitted shall be constructed in accordance with the measures found at paragraphs 5.2.4 and 5.2.5 and Figures 1 to 3 of the Protected Species Survey and Ecological Mitigation Method Statement (Richard Green Ecology Ltd) (March 2021). The measures implemented shall be retained thereafter.
- 5) No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate standards set out by the Institution of Lighting Professionals in their publication Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT, ILP, 2018) have been submitted to, and approved in writing by, the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.
- 6) No construction works hereby permitted relating to tying in the roof of the Annexe, or any other works that impact on the east elevation of the Annexe above eaves height, shall be carried out between 1st May to 30th September (inclusive) in any year.
- 7) If a bat is discovered or suspected at any point during the construction works hereby permitted, the construction works shall immediately pause and the procedure detailed at Appendix 2 (Procedure to Follow if Bats are Discovered During Works), found at page 12 of the Ecological Impact Assessment (Lakeway Ecological Consultancy Ltd) (July 2023), shall be followed.
- 8) The Bat Barn (shown on Drawing No. 008 (Rev. 03)) hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as the Annexe, East Hele Farm, Buckland Brewer, Bideford, Devon, EX39 5LZ.

End of Conditions Schedule