



Appeal Decision

Site visit made on 23 January 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024

Appeal Ref: APP/U1105/W/23/3326357

Land South of Rull Barton, Rull Lane, Whimble EX5 2NX

- 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 K Mooney against the decision of East Devon District Council.
 - The application Ref is 23/0402/FUL.
 - The development proposed is the construction of dwelling and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Part E of the appeal form indicates that the description of development has changed, and evidence has been provided demonstrating that the Council has accepted this change. Accordingly, in the heading above I have used the amended description of development from the appeal form.
3. Since the appeal was lodged a revised National Planning Policy Framework (the Framework) has been published. I have consulted the parties on the amendments, and have had regard to any representations received.
4. The planning history of the appeal site includes the grant of deemed consent for a prior approval application¹ in 2022, for the change of use of a barn to a dwelling with associated building operations under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015. I have been provided with a copy of the prior approval decision and the approved drawings, which I shall refer to as the "prior approval scheme". I have taken account of the prior approval scheme in my consideration of the appeal.

Main Issues

5. Having regard to the evidence and the planning history of the site, I therefore consider the main issues to be:
 - whether the site is in a suitable location for housing, having regard to the area's development strategy;
 - the effect of the proposed development on the character and appearance of the area; and
 - whether there are other considerations that are sufficient to outweigh any conflict with development plan policy in respect of the above issues.

¹ Application reference: 21/2899/PDQ

Reasons

Suitability for housing

6. The appeal site is a linear parcel of land located in the countryside north of the village of Whimble. It contains an existing portal frame agricultural barn, and is accessed by a relatively narrow grassed access track leading to Rull Lane. A small cluster of development associated with Rull Farm lies to the south.
7. The appeal site does not lie within a Built-up Area Boundary, nor does it form part of a site-specific allocation. Having regard to the evidence and my observations during my visit, the appeal site is physically remote from the village. Consequently, the site lies in the countryside for the purposes of Strategy 7 of the East Devon Local Plan 2013-2031 (2016) (the Local Plan).
8. Strategy 7 says that development in the countryside will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development, and where it would not harm the distinctive landscape, amenity, and environmental qualities of the area within which it is located. While the second part of Strategy 7 relates to considerations of harm to landscape and environmental quality, the wording of the policy indicates that these considerations are only necessary if the first test of the policy is met.
9. The appellant has advanced that the existence of the prior approval scheme would bring the proposal to be considered under Policy H6 of the Local Plan which relates to the replacement of existing dwellings in the countryside. However, this policy explicitly requires there to be an existing, permanent, and habitable dwelling located on the site. An existing dwelling is an unambiguous requirement, and there is no provision within the policy for the consideration of the possible future construction of a dwelling. In my assessment of the appeal site, it is evident that there is not an existing dwelling on the site. As the policy requires all criteria to be met, assessment of the proposal against the remainder of the policy is not necessary at this stage. I will return to the prior approval scheme later in this decision, however in so far as it relates to the scheme before me, Policy H6 does not permit the proposed development.
10. No other policies have been cited which might otherwise explicitly permit the development. I therefore conclude that the site would be in an unsuitable location for housing with regard to the area's development strategy, in conflict with Strategy 7 of the Local Plan.

Character and appearance

11. The appeal site is part of the open agricultural landscape north of Whimble, through which a mixture of arable and pasture fields cross a gently undulating landform. Field boundaries comprise mature hedgerows and frequent hedgerow trees. Together with the general absence of development and narrow country lanes, the landscape pattern of the local area creates a verdant and deeply rural character.
12. Where development is present in the landscape, it represents the functional agricultural character of the area. The most notable buildings are simple portal frame barns, both isolated and as part of larger complexes. Smaller features include stable buildings and traditional dwellings, often associated with a farm complex of other buildings. The appeal site is consistent with this character, as

- a simple, functional agricultural barn. While not of any particular aesthetic merit, it does not detract from the character and appearance of the area.
13. The proposed development would represent a move away from the simple character of the existing barn, introducing additional built form and domestication of a larger site area. The efforts made to minimise glazing on the upper floors are noted, as is the use of sliding barn doors to screen and shade the larger glazed areas to the ground floors. The materials of corrugated metal roofing and timber clad walls would also reflect the agricultural setting of the site. However, I have carefully reviewed the material and architectural references provided, and note in particular that in each of the images, the 'barn houses' present one storey of ground-floor fenestration, with large feature roofs. While the roofs may contain additional rooms, the outer appearance of these buildings reflect the low profile and wide span of a functional agricultural building.
 14. Conversely, the proposal would create a series of two storey elevations, with distinct first floor windows, and a domestic scale roof. The insertion of a discrete second storey would noticeably disrupt the simple agricultural form of the existing barn, and would fail to positively reflect the functional agricultural nature of built form in this context. Such departure from the basic form of the existing barn would result in a confused and incongruous appearance.
 15. Reference has been made to an image of a traditional stone barn with large openings on the ground floor and domestic openings at first floor level. However, it is not clear where this example barn is located. During my site visit I was unable to find any similar barns; those in the local area and forming part of the local character appear to be much like the existing barn on the appeal site; simple portal-framed buildings functional for modern agriculture.
 16. The appellant highlights the limited visibility of the site, however, this relies heavily on one boundary hedgerow. During my site visit, vegetation was not in leaf, and I was able to see the existing barn through various sections of this hedgerow. It is therefore not unreasonable to conclude that during times of leaf-fall or following future management of the hedgerow, views of the much larger new dwelling would also be available. In any such views, the dwelling would appear prominent and incongruous in scale, massing, and form. Moreover, the change to the character of the area would be readily apparent at the entrance to the site, where large solid gates are proposed which are not typical of the rural agricultural landscape.
 17. My attention has been drawn to an application for a dwelling in Lyme Regis² which allowed a significant increase in footprint and floor area. Having reviewed the submitted information, I note that that scheme was a replacement dwelling, which this appeal is not. Moreover, the landscape impact, subject to mitigation, was found to be acceptable, in part because the proposal was for a traditionally proportioned dwelling which reflected some of the design cues found in the area. As such, this decision does not reflect the circumstances or proposed development of the scheme before me, and is therefore of little relevance to my considerations.
 18. In addition, I note that the appellant considers certain aspects of the scheme have been agreed with the Council. However, in accordance with the Planning

² Application reference 20/1113/FUL

Practice Guidance³, I have determined the appeal as if the application for permission had been made to the Secretary of State in the first instance, based on all of the evidence before me.

19. Accordingly, I find that the proposal would result in unacceptable harm to the character and appearance of the area, in conflict with Policy D1 of the Local Plan. This policy requires, amongst other things, proposals which respect the key characteristics and special qualities of the area in which the development is proposed, and which ensure that the scale, massing, and fenestration of buildings relate well to their context. While the effects of the development would be localised, there is no qualification within the policy that unacceptable effects can only be caused by significant or widespread harm. There would also be conflict with the Framework where at paragraph 135 it says that planning decisions should ensure that developments are sympathetic to local character, including the surrounding landscape setting.

Other considerations

20. Of principal importance in the material considerations put forward by the appellant is the extant consent for the prior approval scheme. Given the cessation of agricultural operations at the site, and the clear intention of the appellant to bring forward a dwelling in this location, I consider there is a greater than theoretical possibility that the prior approval scheme would be implemented in the event this appeal is dismissed. It therefore represents a genuine 'fallback' position.
21. The appeal scheme's conflict with Strategy 7 relates to the suitability of the site for housing in the countryside, remote from any settlement. Any harm in this regard would be offset to a degree by the fact that the existing building could be converted to a dwelling even in the event the appeal fails. However, the appeal proposal is for a four-bedroomed dwelling. This form of development would indicate family accommodation, from which there would be a need to make regular daily journeys for work and school. The one-bedroomed prior approval scheme would be unlikely to have the same level of travel demand. While a dwelling would be present in either instance, the very different accommodation provided means that the fallback position only attracts modest weight against this policy conflict.
22. The appellant highlights the design improvements achieved through the appeal proposal against the prior approval scheme. Although the materials of the appeal scheme would be appropriate, the corrugated materials of the prior approval scheme would be equally appropriate in this agricultural context. Moreover, the prior approval scheme would introduce low-level, single storey glazing set within the existing portal frame. In contrast to this, the appeal scheme would introduce many window forms across two storeys. While in domestic terms there may be a more aesthetically pleasing balance of solid to void ratios across the elevations, the appeal scheme would represent a marked departure from the functional character of the existing barn. This existing character is described by the appellant as 'utilitarian', however modern barns are typically utilitarian in form, reflecting their function.
23. Accordingly, when considered in this context, the prior approval scheme would retain the form and overall appearance of a modest and functional agricultural

³ Paragraph: 006 Reference ID: 16-006-20140306

unit, and would respect the rural character of the area. As described above, I have found harm to the character and appearance of the area resulting from the appeal proposal as a result of its massing and proportions, in conflict with Policy D1 of the Local Plan. As such, the presence of the prior approval scheme as a fallback position carries very limited weight against this policy conflict.

24. While I accept that the appeal proposal provides a greater offset from existing trees and hedgerows than the prior approval scheme, there is no substantive evidence to show that the prior approval scheme would not have allowed for the retention of the nearby hedgerow (H1), or the Category B Oak (T3), or that any effects on these features could not be appropriately mitigated. Moreover, the two Category A Oak trees (T4 and T5) appear to be unaffected by both schemes. Therefore, while I accept that the appeal proposal would result in a generally more sensitive siting in relation to vegetation on site, this is not a benefit which carries significant weight in favour of the appeal scheme.
25. The appeal scheme would allow for the provision of wildlife habitat, including a wildlife tower and length of species-rich hedgerow. The wildlife tower is identified in the ecological report⁴ as necessary mitigation for the loss of the regularly-used barn owl roost within the existing barn, with post-construction impacts to the barn owl predicted to be negligible. It therefore carries limited weight in this regard. However, there would be some benefit through the provision of suitable habitat for roosting bats also within the tower, and additional hedgerow planting along the site access would provide benefits in terms of greater biodiversity within the site. While they are relatively modest changes, these features would provide a benefit of the appeal scheme against the prior approval scheme.
26. In a similar vein, the appeal scheme would also secure some renewable-energy provision in the form of an area of ground-mounted solar panels, that would not be secured on the prior approval scheme. While the Framework is supportive of such installations, I have been provided with limited evidence as to the anticipated output of the panels, and of the likely energy needs of the dwelling. Accordingly, while energy generation measures are a benefit of the appeal scheme against the prior approval scheme, a small area of solar panels, that may not meet the energy demands of the dwelling carry only modest weight in favour of the proposal.
27. I note that the appeal scheme would provide electric vehicle charging facilities, and the evidence indicates that electric vehicle charging points would not have been secured on the prior approval scheme. Nevertheless, such facilities are a requirement of the Building Regulations⁵, and would therefore be provided in both outcomes. Moreover, there would be no certainty over the vehicle choices of future occupiers. Accordingly, I afford provision of electric vehicle charging points with the appeal scheme limited weight.
28. The appellant has indicated that the appeal scheme would satisfy Lifetime Homes Standards, noting that a home office is incorporated, and that the lightweight internal walls and partitions could easily accommodate change. However, there is little evidence to demonstrate that other design criteria of the standard are met. I note, for example, that the plans indicate the only short, step-free access to the dwelling is through the large garage doors, and

⁴ HT Ecology Limited, January 2023

⁵ The Building Regulations 2010, Approved Document S, Infrastructure for the charging of electric vehicles

that the only entry-level WC facilities are part of the boot room; also located in the garage. While I accept the appeal scheme would provide flexibility for future use including multi-generational accommodation, these benefits would be on a relatively limited scale given the quantum of development proposed. Moreover, while it would accommodate fewer people, the prior-approval scheme would provide all of the accommodation on the ground floor, indicating a greater level of accessibility. I therefore afford the accessibility and flexibility of the appeal scheme very modest weight.

29. The evidence also indicates that the appeal scheme would provide a more attractive garden space. Any benefits in this regard would be primarily personal to the appellant. As in general planning is concerned with land use in the public interest, this carries very limited weight in favour of allowing the appeal.
30. Taking all of the above into account, I conclude that there are other considerations that weigh in favour of the appeal, which include a genuine fallback position which has some benefits over the appeal proposal. However, even taken together, these considerations carry only moderate weight in favour of the proposed development, and do not outweigh the conflict with the development plan.

Other Matters

31. The appeal site is within 10km of the East Devon Pebblebed Heaths Special Protection Area (the SPA). The Council considers that, in combination with other projects, the proposal would lead to likely significant effects on the SPA through increased recreation. The parties do not dispute that these effects could potentially be mitigated by measures provided by the Council using financial contributions secured by way of a legal undertaking, the details of which have been submitted with the appeal. However, as I am dismissing this appeal on other grounds, this is not a matter which needs to be considered further here.
32. The appellant has identified unreasonable behaviour by the Council in relation to prior correspondence with its officers. However, the option to make an application for costs has not been taken by the appellant. Although I accept that in communication with the appellant, the Council's main areas of concern related to the garage element of the proposal, the officer report and reason for refusal make no such distinction. While I have had regard to the submitted correspondence between the appellant and the Council, I have reached my own conclusions based on all the evidence before me in this case.
33. My attention has been drawn to an appeal decision⁶ in which the Inspector appears to have considered a barn with a Class Q fallback under Policy H6 of the Local Plan as a replacement dwelling. I do not have all of the evidence or considerations before that Inspector before me. However, I note that the proposal was described, advertised, and determined as a replacement dwelling, and this proposal is not. Nevertheless, even if I were to have considered the proposal against Policy H6, it would still be subject to other criteria, which require that the replacement dwelling does not detract from the appearance and character of the landscape. Given my findings on character and appearance, the proposal would not accord with the policy, which requires all criteria to be satisfied.

⁶ APP/U1105/W/21/3281230

Planning Balance

34. Paragraph 226 of the Framework identifies that certain local planning authorities will only be required to identify a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing. It goes on to say that this policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need.
35. The Council sets out that it has reached Regulation 18 stage, and the evidence indicates that it has carried out appropriate public consultation on a draft Local Plan, including policies maps and housing site allocations. However, the appellant highlights that further Regulation 18 consultations are planned, suggesting that the necessary stage has not been reached. The Framework does not require local planning authorities to have 'completed' the identified stages, and based on the evidence before me, I am satisfied that the Council's emerging local plan has reached Regulation 18 stage in the terms of the Framework. It therefore meets the provisions of paragraph 226.
36. The evidence shows that the Council had undertaken two supply figure calculations which indicated either a 3.76 year supply, or a 4.5 year supply. The Government has since published amended advice within the PPG⁷ which confirms the Council's calculation methodology leading to the 4.5 year supply to be correct. I am therefore satisfied that the Council is able to demonstrate the minimum 4 year supply, and paragraph 11d) of the Framework is not engaged.
37. I have found that the proposed development would result in harm due to its unsuitable location and effect on character and appearance. This would bring it into conflict with the development plan when read as a whole. A valid fallback position exists, and the appeal scheme presents a number of benefits against the fallback position, including renewable energy generation and biodiversity improvements. The dwelling would also make a small contribution to the Government's objective to significantly boost the supply of homes, and there would be some limited social and economic benefits associated with the construction and subsequent occupation of the dwelling. However, even in totality, these benefits would be limited in scope and scale. In the overall planning balance, I conclude that the benefits of the appeal scheme would not outweigh the proposal's conflict with the development plan.

Conclusion

38. The proposal conflicts with the development plan when read as a whole, and material considerations do not indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

K Jones

INSPECTOR

⁷ Paragraph: 056 Reference ID: 68-056-20240205