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## Appeal Decision

Site visit made on 11 June 2024

**by E Worley BA (Hons) Dip EP MRTPI**

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

**Decision date: 29 July 2024**

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**Appeal Ref: APP/U3935/W/23/3333158**

**Lushill Farmyard, Castle Eaton SN6 7TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mrs A M Kennedy against the decision of Swindon Borough Council.
  - The application Ref is S/22/1576/AMMY.
  - The development proposed is the demolition of existing farm buildings, conversion of stone barn and extension to create single dwelling (Class C3), erection of single new dwelling (Class C3), garages, car parking, landscaping and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing farm buildings, conversion of stone barn and extension to create single dwelling (Class C3), erection of single new dwelling (Class C3), garages, car parking, landscaping and associated works at Lushill Farmyard, Castle Eaton, SN6 7TA in accordance with the terms of the application, Ref S/22/1576/AMMY, and the plans submitted with it, subject to the conditions in the attached schedule.

### Preliminary Matters

2. Additional supporting information including a Landscape Masterplan<sup>1</sup> and Landscape Development Note<sup>2</sup> were submitted as part of the appeal. As the Council and interested parties have had the opportunity to comment on this information, I am satisfied that no injustice would occur by my consideration of these documents as part of the appeal. For the avoidance of doubt, I have determined the appeal having regard to this additional information.
3. A unilateral undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 is submitted as part of the appeal, the purpose of which is to secure a financial contribution towards mitigation measures in relation to the North Meadow part of the North Meadow and Clattinger Farm Special Area of Conservation. I note the Council's concerns in relation to the UU. The Planning obligations: good practice advice expressly allows electronic signatures. The Council has not explained why there would have been any infringement of any guidance on the matter. I am also satisfied that the attached plan is signed, as confirmed by the appellant. Furthermore, I have not been given any indication why witness by somebody closely associated with the appellant would be unlawful, improper, or, in this case, cast any doubt on the enforceability of this deed. I am therefore satisfied that the UU has been correctly executed.

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<sup>1</sup> Drawing No. FM/14 Rev A

<sup>2</sup> Lushill Farm Landscape Development Note by Craig Hamilton Architects dated 8 October 2023

4. The Procedural Guide: Planning appeals – England sets out that in the case of an appeal following the written representations procedure an executed and certified copy of the planning obligation should be submitted by the appellant at the time of making their appeal, and that planning obligations received after this will be taken into account only at the Inspector's discretion. I have the completed obligation before me now, so it has not delayed the decision-making process, and will come into effect on any grant of planning permission. I have therefore had regard to it in the determination of the appeal.

### **Main Issues**

5. The main issues are:

- whether the proposal would be in a suitable location for residential development, with particular regard to the policies in the Swindon Borough Local Plan 2026, adopted 2015 (the LP) and the National Planning Policy Framework (the Framework);
- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on the North Meadow and Clattinger Farm Special Area of Conservation; and
- whether there are any other material considerations that may indicate that planning permission should be granted.

### **Reasons**

#### *Suitability of location*

6. The appeal site is located beyond any defined settlement boundary and is within an area of open countryside. It is in a rural, but not isolated location, given the existing dwellings nearby.
7. Policy SD1 of the LP sets out that, to enable the delivery of sustainable development and support sustainable communities in the Borough all development proposals will, among other things, be accessible by walking, cycling and/or public transport. LP Policy SD2 directs growth and new housing to defined settlements and resists new homes in the countryside except in certain circumstances. The proposal does not meet any of the exceptions for the specific types of residential development identified as being acceptable, in principle, in countryside locations.
8. The proposed new dwellings would be some distance from any settlement or services, including public transport provision. Given the distance, and surrounding highway network, comprising unlit country lanes, devoid of pavements and lighting, this would be likely to discourage future occupiers from walking or cycling. As such, future occupiers of the proposed development would be heavily reliant on the private car to access day to day services and amenities including schools, employment, and retail provision.
9. As such, I conclude the development would not be in a suitable location in light of Policies SD1 and SD2 of the LP and would conflict with the aims of Policy DE1 of the LP that seek to ensure that new development is accessible. It would also fail to reflect the advice in the Council's Residential Design Guide SPD (2016) which encourages accessibility to reach essential facilities, and the aims

of the Framework with regards to managing patterns of growth to limit the need to travel and offer a genuine choice of transport modes.

*Character and appearance*

10. The appeal site comprises a group of former agricultural buildings which form part of the existing farmstead, which encompasses the adjoining Lushill Farmhouse, staff cottage and stables. The modern agricultural buildings and traditional stone barn to which the appeal relates, occupy an elevated position set into the rising land of Lushill, set back from Queens Road to the front of the site. The immediate landscape is predominantly agricultural, with an enclosed paddock to the front of the site between the buildings and the road and Lushill House and Park on the higher ground to the rear.
11. The Council's Landscape Character Areas Supplementary Planning Guidance 2011 (SPG) identifies the area as falling within the northern part of the Midvale Ridge Landscape Character Area (LCA). The appeal site and the surrounding area reflects several of the distinct characteristics of the LCA including a topography of rolling landform of valleys, ridge, hill and plateau tops, open views across the Thames Vale towards the Cotswolds and moderate and small fields enclosed by hedgerows and woodland. The SPG sets out development considerations within the LCA, those relevant to the appeal proposal seek to ensure that non-developed hilltops remain free from development to preserve the prominence and quality of existing hilltop settlements, and to provide planting to contain the development within a discrete area, reflecting the undulations of the landscape.
12. The site is within the Limestone Ridge landscape type of the Wiltshire Landscape Character Area Assessment (2005) where the key characteristics include a pastoral landscape with some arable fields and a settled landscape with a number of large villages, several smaller settlements and scattered farmsteads and includes positive landscape features including areas of peaceful, rural landscape. The site contributes positively to the LCA and the rural character of the locality.
13. The appeal proposal would see the removal of the existing complex of larger scale modern buildings and areas of hardstanding and the extension and conversion of the stone barn to a 4 bedroom dwelling and the erection of a new 3 bedroom dwelling between it and the adjacent staff cottages. The scheme also includes 2 new detached buildings to provide garaging and storage space. The new dwellings would be served by the existing access to the site from Queens Road.
14. The appeal site is clearly visible when viewed from Queens Road and in longer distance views from the surrounding open countryside. Despite the current condition and overall scale and massing of the existing buildings, they are not particularly harmful in landscape terms, given that they are reflective of the rural character of the area and a working farming landscape.
15. The proposal would change the appearance of the site through the replacement of the existing buildings with new built form, with a reduction in the overall volume of the buildings and areas of hardstanding. The proposed development would be of a simple, low-profile form, using local materials, including Lias Limestone rubble, natural oak weatherboard, and slate roof tiles, and would

reflect the historic Victorian farmstead layout of the site, contained within the existing farmyard.

16. The Landscape Masterplan<sup>3</sup> submitted as part of the appeal includes a new hedge to the side boundary of the site, coterminous with the adjoining agricultural land. The existing retaining wall to the rear of the converted stone barn is also shown to be retained. A small orchard within the rear garden of the stone barn would also serve to contain the development within the wider landscape. The provision of a low stone retaining wall and terrace adjacent to the new dwelling would be modest in scale so as not to appear unduly conspicuous. Furthermore, the rear garden area of the new dwelling would be modest in scale and well related to the dwelling. The internal courtyard area is shown to remain open, with ample parking within the new buildings, to minimise the extent of hard surfacing.
17. Consequently, the development would not be an unduly dominant or incongruous feature within the wider area or diminish the prevailing landscape character.
18. The rural character and undeveloped nature of the surrounding area creates a pleasant sense of tranquillity. Given the residential nature and modest scale of the proposal, together with the amount and type of activity, including vehicular movements generated by the development, the proposal would be unlikely to give rise to any significant tangible effects in terms of vehicular emissions, or noise and disturbance, nor would it undermine the tranquil landscape character which is identified as a key characteristic of the area.
19. Consequently, I conclude that the proposal would not harm the character and appearance of the area. In that regard it would accord with Policy EN5 of the LP which, among other things, requires new development to protect, conserve and enhance the intrinsic character, diversity and local distinctiveness of the landscape, and advice in the Framework which recognises the intrinsic character and beauty of the countryside.

### **North Meadow and Clattinger Farm Special Area of Conservation**

20. The site is located within the Zone of Influence of the North Meadow part of the North Meadow and Clattinger Farm Special Area of Conservation (SAC). The SAC is designated for its lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) and very high proportion of the surviving UK population of *fritillaria meleagris*. Recreational pressures, predominantly from an increase in those visiting the SAC, are now causing harm to the habitats. There is, therefore, potential that additional residents at the site, in combination with other development, could result in adverse effects on the integrity of the SAC.
21. The Council advises that mitigation in the form of a financial contribution towards the package of measures set out in the North Meadow and Clattinger Farm Interim Recreation Mitigation Strategy 2023-2028 (May 2023) would ensure that any adverse effects of recreational pressures from additional residential development are avoided. In this case the appropriate contribution is secured through a UU submitted as part of the appeal. Following appropriate assessment under the Conservation of Habitats and Species Regulations 2017, I am, therefore, satisfied that adverse effects on the integrity of the SAC will be

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<sup>3</sup> Drawing No. FM/14 Rev A

avoided. In that regard the proposal would therefore accord with Policy EN4 of the LP which requires development to avoid direct and indirect negative impacts upon biodiversity.

### **Other material considerations**

22. The proposal would offer benefits in terms of housing supply, which is a key objective of the Framework, which seeks to significantly boost the supply of housing. The Council is unable to demonstrate an adequate supply of housing land and while the provision of 2 additional dwellings would not greatly increase total supply, any additional provision would be valuable in the current circumstances in the Borough.
23. The site benefits from prior approval under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) that allows 2 of the existing buildings to be converted to dwellings<sup>4</sup>. There is no substantive evidence that the extant prior approval would not be implemented. Indeed, the appellant asserts that if the appeal is dismissed, the conversion of the buildings would be an integral part of the ongoing management of the estate to secure its long-term financial security. Consequently, there is a real prospect of the development taking place and the prior approval scheme is therefore a realistic fallback position which is a material consideration.
24. The appeal proposal would also result in 2 residential units, with only one additional bedroom over and above the prior approval scheme. As such, both would offer family sized dwellings, of a similar occupancy capacity, and subsequent impacts in terms of the number of journeys by private car generated by the development. The effects of the proposed development in that regard would therefore be almost identical to the extant prior approval scheme. The fallback position therefore attracts significant weight with regards to the location of the development. The proposed dwellings would also benefit from renewable energy features, including solar panels, which would not otherwise be secured through the prior approval scheme.
25. Lushill Farmhouse is a building of significant local interest and therefore a non-designated heritage asset (NDHA), as are the staff cottage, stables and the stone barn. Their significance is derived from their architectural and historic interest and functional/historic relationship. As a group they contribute to the rural character and appearance and the understanding of the area. The Council is content that the proposal would not harm the significance of the NDHAs and would accord with LP Policies which seek to conserve local character and the historic environment.
26. The re-use of the stone barn, which is no longer required in connection with the agricultural activity at the holding, would preserve the NDHA long term and would prevent any further deterioration of the building itself.
27. It is put to me by the appellant that the modern agricultural buildings on the site, including the steel portal framed and breeze block barns, obscure and detract from the appearance and historic interest of the NDHAs and the overall character of the farmstead. The demolition of these buildings as part of the scheme would therefore be beneficial to the historic buildings and their setting.

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<sup>4</sup> LPA Ref. S/PAG2R/23/0312 dated 1st June 2023

Based on the evidence before me, and given my observations on site, I have no reason to reach a different conclusion. The benefits in that regard would weigh in favour of the scheme.

28. Whilst I have found the proposal would not harm the landscape character, given that the existing agricultural buildings are typical of a rural landscape, their replacement would therefore have a neutral effect on the rural character of the area, including its tranquillity. However, given the existing unkept and somewhat redundant nature of the existing agricultural buildings, the proposed development would give rise to benefits in terms of the overall appearance of the site.

### **Planning balance**

29. The proposal would be contrary to development plan policies in respect of the suitability of its location and the need to travel by private vehicle. Significant weight should be attached to the conflict with the development plan. Nonetheless, the implications for the promotion of sustainable transport would however be modest given the size of the development and would be comparable to that of the fallback scheme.
30. Set against this, the Council is unable to demonstrate an adequate supply of housing land and that being the case, para 11 d) i) of the Framework falls to be considered. The proposal for 2 new houses would not greatly improve total supply but in the current circumstances any additional provision would be valuable. The proposal would also offer benefits in terms of the non-designated heritage asset and the setting of other non-designated heritage assets. Consequently, these are considerations which weigh heavily in favour of the scheme. The proposal would also enhance the appearance of the site in the long term, to which I attribute moderate weight.
31. When assessed against the policies in the Framework as a whole, the adverse impact does not significantly and demonstrably outweigh the benefits of the scheme. Consequently, the presumption in favour of sustainable development indicates that permission should be granted.

### **Other Matters**

32. Lushill House, a Grade II listed building, lies close to the site. I am required to have special regard to the desirability of preserving the setting of the listed building. With respect to the scale and nature of the development and to its position relative to Lushill House, and lack of direct intervisibility, I am satisfied that the setting and significance of the listed building would not be adversely affected.

### **Conditions**

33. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance. In addition to the standard condition controlling the timescale within which the development must commence, a condition is required to specify the relevant plans, in the interests of certainty.

34. A condition to agree details of the external materials to be used, joinery, guttering and boundary details is necessary to safeguard the character and appearance of the area, and to preserve the NDHAs. I have imposed a condition to remove permitted development rights for new windows, extensions, outbuildings, and boundary treatments for the same reason.
35. The Highway Authority has suggested a condition to require the reinstatement of the visibility splay at the entrance to the site which it is suggested has become overgrown. However, the access to the site is existing, and there is no clear evidence that such a condition is necessary to make the development acceptable in planning terms.
36. A condition to require a Construction Management Plan is necessary in the interests of highway safety. These details are required prior to the commencement of the development to ensure the site operates safely throughout the construction period. In the interests of highway safety, a condition is necessary to require the provision of parking and turning facilities within the site, prior to the first occupation of the development. There is ample space within the garage/store buildings for bicycles so a condition to agree further details of storage facilities for bikes is not necessary.
37. While I note the Highway Authority's request for a condition to provide electric charging points to achieve sustainability objectives, requirements for installing electric vehicle charge points in new homes now forms part of Building Control Regulations. It has not been explained why these regulations and controls do not satisfactorily deal with this matter. As such, this suggested condition is not necessary.
38. I have imposed a condition to require any new gates at the entrance to the site to be set back 5m and to open inward, which would allow vehicles to pull off the carriageway while waiting for any gates to open, so as not to affect the flow of traffic. There is no clear justification as to why any access gates should be set back 10m as suggested by the council or why the details need to be agreed.
39. A condition is necessary to secure the implementation of the tree protection measures as set out in the submitted Arboricultural Report, to safeguard the existing trees in the interests of the landscape character of the area. It is necessary to impose a condition to require the implementation of the development in accordance with the Addendum Ecological Appraisal by Allied Ecology (April 2023), and the fauna enhancement features, to safeguard protected species and secure biodiversity net gain. It is not necessary to require photographic evidence that the measures have been implemented.
40. Should a Natural England mitigation licence be required, this would be subject to separate legislation, a condition requiring details of the licence to be submitted to the Council is therefore not necessary. On that point, under Regulations 9(1) and 9(3) of the Conservation of Habitats and Species Regulations 2017 I have considered the three tests in the light of any proposed mitigation or compensation and there is no reason to doubt that a mitigation licence would not be issued.
41. A condition regarding contamination is necessary to ensure a safe development for construction workers and future occupiers of the development. This condition is required to be a pre-commencement condition as it is fundamental

to have the information prior to any works being carried out on site. It is not necessary for the developer to confirm in writing that the works were completed in accordance with the agreed details.

42. To ensure the development would not exacerbate flood risk, a condition is necessary to agree details of a surface water drainage scheme, including details of future maintenance, to ensure it remains effective for the lifetime of the development. This is a pre-commencement condition as surface water drainage is an integral part of the development that may affect how it is constructed.
43. A condition to secure a legal agreement in respect of the financial contribution towards mitigation measures in relation to the SAC is not necessary as the agreement has been received.

### **Conclusion**

44. For the foregoing reasons the appeal should succeed.

*E Worley*

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:

AD20 Site Location Plan 1 of 4  
AD21 Site Location Plan 2 of 4  
AD22 Site Location Plan 3 of 4 Rev A  
A23 Site Location Plan 4 of 4  
AD200 Farmstead Proposed Site Layout Plan (Rev I)  
AD202 Rev A Lushill Farm Stone Barn Proposed Ground Floor Plan  
AD203 Rev A Lushill Farm Stone Barn Proposed First Floor Plan  
AD204 Rev A Lushill Farm Stone Barn Proposed North & East Elevations  
AD205 Rev B Lushill Farm Stone Barn Proposed South & West Elevations  
AD206 Rev B Lushill Farm Stone Barn Garages Proposed Plan & Elevations  
AD207 Rev B Lushill Farm New House Proposed Ground Floor Plan  
AD208 Rev C Lushill Farm New House Proposed Elevations  
AD209 Rev B Lushill Farm Garages & Store Proposed Ground floor Plan  
AD210 Rev C Lushill Farm Garages & Store Proposed Elevations  
AD211 Rev B Proposed Site Layout Showing Fauna Enhancement Features  
FM/14 Farmyard Landscape masterplan (Rev B)

- 3) No development above ground level shall take place until the following details have been submitted to and approved in writing by the local planning authority:

- joinery details, including finish, and any roof lights

- external materials
- proposed guttering
- proposed boundary treatments.

The development shall be carried out in accordance with the approved details and retained as such thereafter.

- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and reenacting that Order with or without modification), no new windows including dormers and roof lights shall be inserted, no extensions or erection of ancillary buildings, and no alterations to boundary treatments, shall be allowed under permitted development rights, and any such works will require the express written planning permission from the local planning authority.
- 5) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall provide for:
  - the parking of vehicles of site operatives and visitors;
  - loading and unloading of plant and materials;
  - storage of plant and materials used in constructing the development;
  - wheel washing facilities and road sweeping facilities;
  - delivery, demolition and construction working hours.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 6) The development hereby permitted shall not be occupied until the vehicular parking and turning facilities, including garages, have been provided in accordance with the submitted plans, drawing numbers AD 200 Rev I, AD 206 Rev B, and AD 209 Rev B and those facilities shall be maintained and kept available for those purposes thereafter.
- 7) Any new access gates installed at the entrance to the site shall be set back 5 metres from the adjoining carriageway edge and shall be made to open inwards only.
- 8) The tree protection measures set out in the Tree Report by B J Unwin Forestry Consultancy dated October 2022 shall be implemented in full.
- 9) The development hereby approved shall be undertaken in strict accordance with the 'Addendum Ecological Appraisal' (Allied Ecology, April 2023). Prior to first occupation of the development hereby permitted, the enhancement features shown on drawing number AD211 Rev B - Proposed Site Layout Showing Fauna Enhancement Features, shall be installed and shall be retained thereafter in perpetuity.
- 12) a) No development shall take place until a remediation scheme, specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted, shall be submitted to and approved in writing by the local planning authority.

b) The approved remediation scheme shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 13) Prior to the commencement of the development hereby approved, details of the proposed means of disposal of surface water from the development, including a management and maintenance plan for the lifetime of the development, 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 prior to the first occupation of the development and subsequently managed and maintained in accordance with the approved details thereafter in perpetuity.

**\*\*\*\*\*END OF CONDITIONS\*\*\*\*\***