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# Appeal Decision

Site visit made on 2 July 2024

**by R Kent BA (Hons) MTP DipM MRTPI**

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

**Decision date: 8 August 2024**

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**Appeal Ref: APP/X1118/W/24/3339275**

**Westacott Barns, Road from Ford Cross to Poadmarsh Cross, Ash Mill,  
Devon EX36 4QY**

- 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 Mr Bill Johns (Fire Defence Servicing Ltd) against the decision of North Devon District Council.
  - The application Ref is 77187.
  - The development proposed is described as "The proposal includes a new access driveway to the existing house, 2 agricultural barn conversions with associated driveways, gardens and boundary treatments".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2023, after the Council made its decision. The reasons for refusal refer to the wording of paragraphs 203 and 110(b) but the text quoted is found in paragraphs 209 and 114(b) of the revised Framework. I have determined the appeal on that basis.
3. The appellant has submitted an additional, amended plan as part of their appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
4. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
5. The amendments on plan reference A002 relate only to the provision of visibility splays at the junction of the proposed access and the public highway and would not substantially alter the appeal scheme compared to that upon which the Council made its decision. It is not necessary for interested parties to be reconsulted and the Council has had the opportunity to comment on the plan. In doing so, the Council's Statement of Case (SoC) refers to the removal of a bank along the frontage of the site to form the visibility splays and

maintains its objection as set out in the third reason for refusal. The appellant has had the opportunity to comment on this and I have taken these submissions into account in my decision. On that basis I find that both parts of the necessary test set out in the relevant case law have been satisfied and I will accept the amendments. Accordingly, I have determined the appeal having regard to the amended plan.

6. A bat survey prepared by Kestrel Wildlife Consultants dated 15 February 2024 ('the 2024 bat survey') was submitted with the appellant's appeal statement. The Council has provided its comments on this additional information in its SoC and maintains its objections as set out in the second reason for refusal. I have determined the appeal on that basis.
7. The appeal proposals refer to the barns as 'Barn 1' and 'Barn 5'. Barn 1 is labelled as 'B1, B2, B3 and B4' on Site Plan A001. For clarity, I have referred to them as Barn 1 and Barn 5 in my decision.

### **Main Issues**

8. The main issues are:

- The effect of the proposed development on the character and appearance of the barns and their surroundings, including its effect on their significance as non-designated heritage assets;
- The effect of the proposals on bats; and
- The effect of the use of the proposed access on the safety of pedestrians, cyclists and drivers using Poadmarsh Hill.

### **Reasons**

*Character, appearance and effect on the barns' significance as non-designated heritage assets (NDHAs).*

9. Barn 1 and Barn 5 are part of a group of buildings around an enclosed yard with a house at the northern end. Both barns are NDHAs. The significance of them as heritage assets is derived in part from their distinctive traditional, agricultural character and appearance reflective of their age and use. Although their roofs have been replaced and there are more modern buildings in the group, both individually and collectively they make a positive contribution to the character and appearance of the site and the surrounding area.
10. The conversion of Barn 1 would involve the removal of the cob building on its western side. Together with the creation of new openings on its southern elevation and the upper storey of the east elevation, this means the barn would lose much of its traditional agricultural character. Combined with the remodelling of the part of the barn which currently projects from its west elevation, this would give the building a distinctly domestic character and appearance. A substantial element of rebuilding is proposed at the northern end of Barn 5 including a change in the form and height of the roof. Together with the porch and alterations to its west elevation, this would detract from the simple form of the current building and cause it to lose much of its character as an agricultural barn. As a consequence, the proposals would cause considerable harm to the character and appearance of both barns and harm their significance as NDHAs.

11. The widening of the access and the creation of visibility splays would require alteration to a section of the existing bank and hedgerow fronting the road. There is already a substantial verge at this point which provides a more open character to this part of Poadmarsh Hill than is found to the north of the proposed access. Whilst the impact of the visibility splay on the bank and hedgerow would cause harm to the character and appearance of the road, this could be mitigated by the realignment of a section of hedge and bank behind the visibility splay. The proposals also indicate a new 'Devon Bank' along the length of the proposed drive which would further ameliorate the visual impact of the access on the character and appearance of its surroundings. This planting could be secured by an appropriately worded landscaping condition if I were minded to allow the appeal.
12. Notwithstanding this, the proposals would nevertheless conflict with policies ST15 and DM27 of the North Devon and Torridge Local Plan 2011-2031 (NDTLP) which seek to conserve Devon's heritage assets and manage the conversion of rural buildings; and with the Framework's policies for conserving and enhancing the historic environment.

#### *Bats*

13. The 2024 bat survey identifies the presence of several small day roosts used by individual bats and makes recommendations to mitigate the impact of the proposals on them. The evidence demonstrates that the mitigation proposals are necessary to avoid adverse impacts on the bat population. The location for the bat loft suggested in the 2024 bat survey would be the northern end of Barn 1. However, no details of its design or the implications for the currently proposed internal layout, external appearance and fenestration have been provided. I cannot therefore be certain that it can be accommodated without causing harm to the character and appearance of the barn. Nor is it clear how the bat slates and shelters would be designed and located.
14. I have given consideration as to whether appropriately worded conditions could be used to secure the mitigation measures set out in the 2024 bat survey. However, it has not been shown that the bat loft could be inserted without significant alteration to the character and appearance of Barn 1. Given the importance which I have attached to the appearance of Barn 1, such a condition is not appropriate in the absence of full details.
15. The bat slates, shelters and future means of external illumination are unlikely to have an adverse impact on the appearance of the barns. Therefore, were I to be minded to allow the appeal these matters could reasonably be dealt with by conditions.
16. In the absence of evidence to demonstrate how the bat loft could be incorporated without causing further harm to the NDHAs, I conclude that the proposals would have an adverse impact on bats in conflict with policies ST14 and DM08 of the NDTLP which seek to conserve European protected species and their habitats.

#### *Access.*

17. The Local Highway Authority states that a visibility splay providing 59m in each direction is required to allow the driver of a vehicle exiting the site to do so safely. The plans which were submitted to the Council did not show the

visibility splay. However, an amended plan has been submitted as part of the appeal submission. This plan details the visibility splays which can be provided subject to works within the site to relocate a hedge. Following these works, which could be secured through a planning condition, the required visibility splays would be provided. I have addressed the effect of the works to the hedge above.

18. I conclude that, subject to the provision and retention of the visibility splays shown on the amended plan, the use of the proposed access would not have a harmful effect on the safety of pedestrians, cyclists and drivers using Poadmarsh Hill. As a consequence, the proposal would provide a safe access in compliance with NDTLP policy DM05 which seeks to ensure safe and well designed access and egress; and the Framework which requires the provision of safe and suitable access.

### **Planning Balance and Conclusion**

19. I have found that the development would not have a harmful effect on the safety of pedestrians, cyclists and drivers using Poadmarsh Hill. However, it would harm the character and appearance of the barns and their significance as NDHAs and it has not been demonstrated that suitable mitigation measures can be provided to address potential harm to protected species. These harms are sufficient to justify dismissing the appeal.
20. Set against this harm, the proposals would have the benefit of bringing the buildings into use; arresting their future decline and making effective use of existing buildings to provide contemporary new homes, the occupants of which would create an economic benefit by using local services. I am satisfied from the evidence however that these benefits could still be achieved by a more sensitive design and therefore have given them moderate weight. They do not outweigh the harm caused to the significance of the NDHAs to which I give great weight
21. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

*R Kent*

INSPECTOR