

Appeal Decision

Site visit made on 3 September 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024.

Appeal Ref: APP/W1145/W/24/3341617

Meadow Park, Orleigh Close, Buckland Brewer, Devon EX39 5NY

- 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 and Mrs Rhodes against the decision of Torridge District Council.
 - The application Ref is 1/0409/2023/FUL.
 - The development proposed is described as "2 proposed single storey dwellings, and associated works to including new access to existing meadow park bungalow".
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Decision

1. The appeal is allowed and planning permission is granted for 2 single storey dwellings, and associated works to including new access to existing meadow park bungalow at Meadow Park, Orleigh Close, Buckland Brewer, Devon EX39 5NY in accordance with the terms of the application, Ref 1/0409/2023/FUL, subject to the conditions in the attached schedule.

Procedural Matter

2. The description of development in the banner heading above is taken from the application form. It does however contain language that is not an act of development. I have therefore removed the superfluous wording from the formal decision above.

Main Issue

3. The main issue is whether the proposed development is in a suitable location for housing having regard to the local housing strategy and national policy; and if not whether there are any other considerations that justify a decision otherwise than in accordance with the development plan.

Reasons

4. The appeal site comprises a former agricultural building and associated structures over a generous hardstanding area. It is understood that part of the large building suffered some storm damage and I saw that a central skeletal frame remains. Next to this and adjoining the tall frame is a large mono pitched part of the building that appeared to be in relatively good order. There is an existing bungalow to one side of the appeal site and new housing estate on its other. At the time of my visit, this estate was under construction, where a number of nearby houses were visible.

5. In that context and with reference to paragraph 84 of the National Planning Policy Framework (the Framework), the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Despite a hedge boundary between the housing estate and appeal site, it is not physically from the settlement or “isolated”. Therefore, the circumstances for allowing isolated homes in the countryside would not apply to this appeal.
6. Policy ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP) sets out the strategy for development in the district. This establishes a hierarchy whereby local centres are the focus for development growth, followed by more modest growth in the defined villages. Thereafter, development in other rural settlements and the countryside is limited to meet local economic and social needs, and development necessarily restricted to a countryside location.
7. The scheme would provide future occupants with the opportunity to safely walk a short distance into the local centre with its modest range of services and facilities. However, it is located outside, but adjoining its settlement boundary. Therefore, the appeal site is defined in the LP as being in the countryside, where development is necessarily restricted. None of the aforementioned circumstances have been advanced in support of the 2 proposed dwellings. Consequently, the scheme would conflict with the housing strategy, which represents harm.
8. Therefore, I conclude that the site is not a suitable location for the proposed development, having regard to the local housing strategy. There would be conflict with Policy ST07 of the LP.

Other Considerations

9. Both parties refer to the court judgement of *Mansell v Tonbridge & Malling BC* where it was found that a fallback position can be a material planning consideration provided there is a real prospect of a fallback development being implemented.
10. In this respect, it has been brought to my attention that there was a previous permission in 2014 at the appeal site to convert outbuildings into 3 dwellings. However, there is little show that this was implemented, which means it cannot be relied upon in its own right. The appellant has expressed a lack of enthusiasm for converting the storm damaged buildings and questions what might be realistically creatable from the remaining structure. They do however add that there is no reason to suppose another conversion scheme would not be successful.
11. The Council is concerned that no efforts have been made to demonstrate a conversion would be possible. It adds that information such as a structural report, plans showing the number units and layout would have aided this approach. I agree that such clarity and commitment on the part of the appellant would indeed have been useful. Despite this, there is no evidence that a conversion could not be granted again.
12. Additionally, from my visit, it was evident that a good proportion of the main building was clad or walled and appeared weather tight. Even if the storm damaged sections of the skeletal frame and other outbuildings beyond could

not be used in a conversion, it is conceivable that there could be sufficient remaining building to create 2 dwellings. Based on the evidence before me and my own observations, I am satisfied that there is a reasonable prospect of a conversion. However, in the absence of any extant permission or clarity over the potential conversion, the fallback can be given moderate weight.

13. Notwithstanding this, in its current form, the unattractive appeal building stands as an imposing feature between much smaller scaled residential development either side of it. The scheme would introduce 2, single storey buildings of simple design with a sympathetic use of external material. They would be well screened by tall hedgebanks, existing trees and planting. Consequently, their presence would not represent an incursion into the countryside. When compared with the existing appeal buildings, the proposal would be substantially smaller in height and significantly more compatible with its immediate setting. This would represent a notable benefit to the character and appearance of the area, to which I attribute substantial weight. It would also be reflective of *betterment*.
14. There is a grade II* listed building nearby. Consequently, there is a statutory duty to pay special regard to the desirability of preserving its setting. The appeal site is located some distance from the Church of St. Mary and St. Benedict. The distance, together with intervening vegetation means that the appeal site would not be readily visible from this church, therefore avoiding harm to both its setting and significance. Although the proposal would reduce the overall height of built form here, this is neutral factor in favour of the development.
15. The proposal would make a positive but modest contribution to the overall supply of housing, given its small scale.

Other matters

16. I have paid regard to 3rd party concerns over the potential for future development using the appeal site access. However, I have determined the appeal on its site-specific circumstances. As such, there is no reasonable prospect of such a development being repeated nearby.
17. Whilst other sites are currently under construction, this would not be a reason to prevent such a scheme from coming forward. Additionally, the Parish Council is concerned that the development is not included in the approved Parish Plan. I have however been provided with no substantive evidence in respect of the status of such a plan. In these circumstances, this matter cannot be given any weight.
18. The evidence shows that the proposal would not have an adverse effect on biodiversity. Bat and bird boxes are shown on the plans. I am therefore satisfied that the scheme would align with the thrust of policies ST14 and DM04 of the LP.

Conditions

19. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Planning Practice Guidance (PPG) and the Framework.

20. In the interests of clarity, standard conditions requiring the development to be carried out in accordance with the plans and within a time limit have been imposed. During the appeal it has been confirmed that plan 21154 07, dated 27.4.23 should have been in the list of plans. This shows a proposed garage for plot 1. I am satisfied that there would be no procedural unfairness by its inclusion within the approved plans.
21. I have not imposed the suggested landscaping condition as the development would be positioned between residential development and read in this context. Additionally, there is already a substantial amount of tree cover and natural vegetation, including tall hedgebanks surrounding the appeal site. For these reasons, the condition would not be necessary to make the development acceptable in respect of its effects on the character and appearance of the area.
22. The PPG says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. This is reaffirmed in the Framework where it says in paragraph 54 that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. There is no substantive evidence to demonstrate that the blanket removal of freedoms to carry out small scale alterations is reasonable or necessary in this instance. I have therefore not imposed the Council's suggested condition for the removal of certain permitted development rights.
23. In the interests of the living conditions of nearby residents, I have imposed a condition to control construction hours. Additionally, to avoid adverse effects on environmental and human health, I have included a condition to address unexpected contamination during the development.

Planning Balance and Conclusion

24. I have found that the development would conflict with the development plan in that it is contrary to the housing strategy within the LP.
25. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
26. In the circumstances of this appeal, there is a reasonable prospect that a conversion could come forward. Additionally, the scheme would be located in close proximity to a local centre. As such, future occupants would be provided with an opportunity to walk or cycle, with close and easy access local services and facilities. The removal of incongruous built form, use of despoiled land, together with the visually attractive design and layout would ensure the development would function well and add to the overall quality of the area.
27. When considered cumulatively, there are material considerations in this case which indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should succeed.

J Hills

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: 21154 – 01, dated 25.4.23; 21154 02 D, dated 31.3.23; 21154 03 B, dated 29.3.23; 21154 04 B, dated 29.3.23; 21154 05 A, dated 31.3.23; 21154 05 B, dated 31.3.23; 21154 07, dated 27.4.23; 21154 08 A, dated 27.4.23.
3. The development hereby permitted shall only be carried out, (including the delivery of construction materials), during Monday to Friday between the hours of 07:00 to 19:00 and Saturday between the hours of 08:00 to 13:00 with no works, (or the delivery of construction materials) being carried out on Sundays and Bank Holidays.
4. Should any contamination of soil or groundwater be discovered during development of the site, the local planning authority should be contacted immediately. Site activities within that phase or subphase or part thereof, should be temporarily suspended until such time as a procedure for addressing such contamination, within that phase or sub-phase or part thereof, is agreed upon with the local planning authority or other regulating bodies.