



Appeal Decision

Site visit made on 28 August 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2024

Appeal Ref: APP/U1105/W/23/3331872

Site of Spillers Cottage, Road From Pear Tree Cottage To Deep Cut Farm, Shute, Devon EX13 7QG

- 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 D Branker against the decision of East Devon District Council.
- The application Ref is 22/1377/FUL.
- The development proposed is the construction of a dwelling (retrospective) for occupation while the dwelling permitted under reference 21/0535/VAR is constructed, after which the first dwelling will be demolished.

Decision

1. The appeal is allowed and planning permission is granted for the construction of a dwelling (retrospective) for occupation while the dwelling permitted under reference 21/0535/VAR is constructed, after which the first dwelling will be demolished at Site of Spillers Cottage, Shute, Devon EX13 7QG in accordance with the terms of the application, Ref 22/1377/FUL, and subject to the conditions in the attached schedule.

Preliminary Matters

2. Part E of the appeal form indicates that the description of development has changed, and evidence has been provided demonstrating that this has been agreed between the main parties. Accordingly, in the heading above I have used the amended description of development from the appeal form. Although "retrospective" is not a form of development, I was able to see on the site that the dwelling has been constructed, and I have determined the appeal on that basis.
3. The planning history of the appeal site includes the grant of planning permission in 1991¹ for a house, with a subsequent permission granted in 2021² to revise the design of the dwelling. The dwelling was under construction during my site visit.
4. In November 2023, the National Landscapes Association reported that all designated Areas of Outstanding Natural Beauty (AONBs) had become National Landscapes. In this decision I have continued to use the term AONB, consistent with the evidence. The legal designation and policy status of such areas is unaffected, whichever term is used.

¹ Application reference: 91/P0654

² Application reference: 20/0535/VAR

Main Issues

5. The first main issue is the effect of the dwelling on the character and appearance of the area, having regard to its location within the East Devon AONB. The second main issue is whether the dwelling is acceptable in principle, having regard to development plan policy on development in the countryside and other material considerations.

Reasons

Character and appearance

6. Within AONBs, great weight should be given to conserving and enhancing the landscape and scenic beauty of the area. Strategy 46 of the East Devon Local Plan (2016) (the Local Plan) deals with the AONB and amongst other things, requires development to conserve and enhance the landscape character of the area. Strategy 7 also seeks to ensure that development does not harm the distinctive landscape, amenity and environmental qualities within which it is located, including any adverse disruption of a view from a public place which forms part of the distinctive character of the area or otherwise causes significant visual intrusions.
7. The dwelling has been constructed close to the edge of a narrow lane on a sloping valley side. While it is set into the rising landform, it is prominent from a short stretch of the road, and forms an obvious development feature where there would not have been development previously. Its design reflects its temporary nature, with a relatively ad hoc collection of materials that, while generally recessive in appearance, do not reflect locally distinctive buildings. However, while the dwelling lies within the open countryside, its location is very much influenced by the residential nature of the site as a whole. Ongoing construction work on the main dwelling alongside domestic features including parking and landscaping have significantly affected the character of the site.
8. Due to the presence of these features, the appeal building feels and appears as part of the residential plot. This effect will only increase as construction of the main dwelling progresses. Furthermore, the intention of the application is that the dwelling would be located on the site for a defined period, and then removed in its entirety. Therefore, whilst the appeal dwelling does not reflect the robust and attractive building materials of the locality, due to the presence of other associated structures and activities, and the limited time it would be in place, the dwelling does not have a significant effect upon the immediate character and appearance of the area.
9. While the site is also visible at a distance across the valley landform, such views are glimpsed through field gateways or from the A35 on which users will be travelling at some speed. In these views, the dark brown tones of the temporary dwelling do not draw the eye or cause notable visual intrusion.
10. The Council has also raised concern regarding the effect of the dwelling on trees close to the appeal site. The evidence does not indicate that the trees are formally protected, but as characteristic landscape features they make a significant contribution to the character and appearance of the area and the natural beauty of the AONB.

11. The submitted Tree Protection Plan does not accurately depict the position of the dwelling in relation to the nearby trees, nor does the arboricultural method statement reflect the works that have been carried out to the trees closest to the dwelling. T1 is an oak, and an attractive tree making a significant contribution to the character of the landscape and the rural lane. Although the dwelling falls within a small part of its root protection area (RPA), located outside the site, this tree does not appear to be adversely affected by the development through excavation or compaction of the ground. However, it is a tree worthy of retention and would need consideration for any subsequent regrading/making good/landscaping of the area following the removal of the dwelling.
12. Un-numbered trees are also present on the bank to the north-west of the dwelling, including a mixture of coniferous and Ash species. Some significant works to reduce the canopy of these trees have been carried out, alongside excavations of the bank they grow on to create space for the dwelling. The excavations and retaining wall lie very close to the stem of one of the trees within the group, are likely to have caused some considerable damage within a large proportion of its RPA, and may result in the future loss or significant reduction of this tree. As part of a larger group and tree line, this tree makes a modest contribution to the character of the area, and it is likely that its loss could be mitigated with future boundary planting in this location. However, appropriate tree protection measures would be necessary during the removal of the dwelling and subsequent restoration of the area to ensure that the remainder of the bank remains secure, and the larger group of trees are protected.
13. Subject to a condition securing detailed and accurate tree protection measures for the duration of the development, and landscaping of this area of the site following removal of the dwelling, I am satisfied that the development would not harmfully undermine the existing contribution that the trees close to the site make to the AONB. This would accord with Strategy 7 and Policy D3 of the Local Plan insofar as they seek to ensure that important natural features that contribute to local landscape character are not harmed, that there is no net loss in the quality of trees, and that appropriate tree retention and/or planting is proposed.
14. Overall therefore, I find that the appeal dwelling does not harmfully affect the character and appearance of the area, and conserves the landscape and scenic beauty of the AONB. While the dwelling does not enhance the landscape or visual amenity of the area, it is proposed as a temporary feature and subject to conditions securing the removal of the building, tree protection, and the appropriate restoration of the site area, I am satisfied that in this regard, the relevant tests of Strategy 7, Strategy 46, and Policy D3 of the Local Plan would be met.

Whether the dwelling is acceptable in principle

15. The appeal dwelling is located in the countryside for the purposes of planning policy, as controlled by Strategy 7 of the Local Plan. This sets out that development in such locations will only be permitted where it is in accordance with a specific development plan policy that explicitly permits such development and where it would not harm the distinctive landscape qualities within which it is located. I have considered the effects of the dwelling on the landscape above, and found no policy conflict. However, it

has not been put to me that the dwelling would be explicitly permitted by any other development plan policy. As such, it would fail to accord with Strategy 7, representing an unsuitable location for a dwelling, in conflict with the development plan.

16. Notwithstanding this conflict, the intention of the application is clearly for the temporary siting and occupation of the appeal dwelling, while the main dwelling is constructed. With a suitably controlled temporary permission, there would not be an additional occupied dwelling on site, and the appeal dwelling would not result in additional harms from isolated development that the development plan seeks to avoid. The Council does not dispute that material considerations may exist to justify a temporary permission for the dwelling.
17. The Planning Practice Guidance (PPG)³ gives advice regarding circumstances where a temporary permission may be appropriate. These include where it is expected that the planning circumstances will change in a particular way at the end of that period.
18. Permission was granted for the main dwelling in 2021, and the appellant has occupied the appeal dwelling since 2023. While the Council identifies that limited progress has been made on the main dwelling, I understand that this has been a period during which there have been difficult economic conditions. During my site visit, construction work was evidently underway, with plant, materials, and activity on site. While progress to date has not been significant, I am unconvinced that this in itself indicates a lack of intention to eventually build and occupy the main dwelling, and to remove the appeal dwelling. I therefore consider this to represent a change to the planning circumstances at the end of a defined period.
19. The appellant has described the financial difficulties they have faced which have left them with no option other than to live on the site while the main dwelling is constructed. As a self-build project, I have some sympathy with this position, and also note that the area is very remote, with few available options for medium-term accommodation of a suitable size or affordable nature. I therefore consider that in this instance, there is sufficient justification for a temporary form of accommodation at the site to facilitate the construction of the main dwelling.
20. Temporary accommodation for this use is often provided by a mobile home or touring caravan. However, I am satisfied that the provision of mobile accommodation in this form would not be practicable given the narrow and steep access to the site. I am also sympathetic to the health of the appellant's wife and their desire to maintain a minimum standard of accommodation for her comfort, noting that the appeal dwelling directly meets their needs during the proposed temporary period, with one bedroom, one bathroom, and a modest kitchen/living space.
21. The Council's principal area of concern relates to the application of the PPG insofar as it states that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness.

³ Paragraph: 014 Reference ID: 21a-014-20140306, Revision date: 06 03 2014

22. That the dwelling is not movable is neither in question, nor particularly pertinent to the application of the PPG, which does not define permanence in this manner. The dwelling is evidently of a more substantial construction than a mobile home or touring caravan. But that does not in itself indicate that it is intended to be permanent. The building's timber frame base rests on a series of blockwork columns, and is not secured to the ground or on any form of permanent foundations. While it would not be easy to disassemble the building into a 'kit' form to reassemble elsewhere, it is of a simple panel construction which could be disassembled into its component parts in a relatively straightforward manner. A number of these components are also intended to be used within the main dwelling, indicative of their temporary association with the appeal building.
23. There is no stipulation as to the means of demolition or removal of the building within the PPG, and whether or not there is a market for the used materials therefore carries limited weight in my considerations. As a relatively small structure I also see no reason why the materials could not be removed from site within a reasonable timescale, be that through sale, reuse in the main dwelling, recycling, or other waste disposal.
24. Accordingly, while the dwelling is not a caravan or movable structure, neither is it of a clearly permanent construction that would make its removal from site physically impractical, prolonged, or otherwise unreasonable. I therefore consider that the nature and construction of the dwelling indicate that a condition requiring its removal after a stated period would be reasonable.
25. Taking all of the above into account I conclude that while the dwelling would conflict with the development plan in respect of its location in the countryside, material considerations exist to justify the temporary siting of a dwelling in this location. A condition securing the temporary nature of the dwelling would, in this case, meet the test of reasonableness as outlined by the PPG.

Conditions

26. The Council provided a single suggested condition, which I have reviewed with regard to the National Planning Policy Framework and the PPG. I have amended the wording where necessary to improve precision and enforceability.
27. Given that the dwelling has already been constructed, the standard time limit condition would not be appropriate. I have attached a condition specifying the approved plans to provide certainty. In addition, given the limited detail shown on the plans, I have also attached a condition regarding the external materials of the dwelling to protect the character and appearance of the area.
28. Conditions securing a landscaping scheme and tree protection measures are necessary to protect the character and appearance of the area, and to ensure that the site is restored to an appropriate condition following the removal of the dwelling. As the existing arboricultural information contains inaccuracies, there is some urgency in securing accurate information to limit any further harm to the nearby trees during the temporary period of occupation. Given the scale of the site and small area of affected landscape, a period of three months to secure this additional information is reasonable.

29. Although the proposal is for a temporary dwelling, the building footprints do not overlap and therefore it would be physically possible for both properties to coexist. A condition is therefore necessary to require the demolition of the appeal dwelling within a defined period of the cessation of its occupation.
30. There is disagreement between the parties over the appropriate duration for the removal of the appeal dwelling. The Council has suggested that three months would be sufficient, and the appellant has suggested one year. As well as the appellant's intention to sell various components of the temporary dwelling, I am mindful that the reuse of various elements within the main dwelling is likely to involve a phased approach, which would take longer than a straightforward demolition or removal. However, given the modest size of the dwelling and its straightforward construction, I consider that 6 months would be sufficient to allow for the removal and/or reuse of the necessary materials, alongside the removal of all other building materials from the site.

Conclusion

31. The proposed development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it. Therefore, for the reasons given above, the appeal should be allowed.

K Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos 20/15/04 A (Temporary Accommodation (combined plans)), 20/15/05 (Tree Protection Plan), and the Arboricultural Method Statement dated September 2022.
- 2) Within three months of the date of this decision, details, including colours, of all external facing materials shall be submitted to and approved in writing by the local planning authority. The development shall be retained in accordance with the approved details.
- 3) Notwithstanding condition 1, within three months of the date of this decision, an updated scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance British Standard BS 5837 Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall be submitted to and approved in writing by the local planning authority. The tree protection plan and method statement shall cover the protection of the retained trees during:
 - the temporary period of occupation of the dwelling hereby permitted;
 - the demolition and removal of the dwelling hereby permitted; and
 - the implementation of the works to restore the site following the removal of the dwelling hereby permitted, approved by condition 5.The updated scheme for the protection of the retained trees shall be carried out as approved.
- 4) Within two years and six months from the date of this decision, within six months of the first occupation of the dwelling permitted under planning permission 21/0535/VAR (or any variation or replacement planning permission) (the main dwelling), or within six months of the dwelling hereby permitted ceasing to be occupied by Mr and Mrs D Branker, whichever is sooner, the dwelling hereby permitted and all materials arising from its demolition shall be either installed within the main dwelling or removed from the site.
- 5) Within three months of the date of this decision, a landscape scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of works to restore the land following removal of the development hereby permitted, including hard and soft landscaping and details of any ground level changes. The approved landscape scheme shall be fully implemented within the first planting season (November to March inclusive) following the removal of the dwelling hereby permitted, as detailed in condition 4.

-- End of Schedule --