



Appeal Decision

Site visit made on 12 September 2024

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/U1105/W/23/3332347

Land at Barnards Hill Lane and Harepath Hill, Seaton EX12 2TF

- 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 Justin Werb against the decision of East Devon District Council.
 - The application Ref is 22/2582/FUL.
 - The development proposed is the erection of one dwelling and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one dwelling and associated works at Land at Barnards Hill Lane and Harepath Hill, Seaton, EX12 2TF in accordance with the terms of the application, Ref 22/2582/FUL, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are: (i) the effect of the proposed development on the character and appearance of the area; and (ii) whether the proposed development would be in a suitable location, taking account of the Council's adopted spatial strategy and access to services and facilities.

Reasons

Character and Appearance

3. The appeal site is an area of open land, situated between existing dwellings alongside Harepath Hill. The area has a reasonably spacious and verdant feel which reflects the rural character of the immediate surroundings. The proposed development would involve the construction of a relatively large single dwelling.
4. At present, the openness of the site provides a gap between the existing homes and it is obvious that the proposed dwelling would reduce that gap to some extent. However, it is clear from the plans that the dwelling would still be situated a reasonable distance from the homes either side, thereby ensuring that the area would maintain its current feeling of spaciousness and verdancy. Furthermore, the new dwelling would represent infill development and would therefore be seen as a logical and coherent addition in the context of its neighbouring properties, rather than an extension of ribbon development into open countryside. In any event, given the natural screening that already exists along Harepath Hill and Barnards Hill Lane, it is likely the proposed dwelling would only be glimpsed from public roads.

5. The Council has set out that the actual design of the proposed dwelling would be acceptable. From the evidence before me I have no reason to disagree with that assessment. Site levels could be addressed via an appropriately worded condition to ensure that the proposed home would not appear to be significantly taller than the neighbouring home known as Barnards.
6. As a result, I therefore conclude that the proposed development would not result in harm to character and appearance. As such, it would conform with Strategy 7 and Policy D1 of the East Devon Local Plan 2016 (LP), the relevant aspects of which seek to ensure that development is well designed and that it preserves character and appearance. I also do not find conflict with LP Strategy 8 given that the site is situated outside of any designated green wedges.

Location

7. The appeal site is located a short distance outside of the development boundary for Seaton and is therefore considered to be within the countryside for the purposes of planning. Strategy 7 of the LP sets out that, outside of built-up area boundaries and site-specific allocations, development in the countryside will only be permitted where it would be in accordance with a specific policy that allows such schemes.
8. The proposed dwelling would be an open market home and there are no policies that support the provision of that form of development within countryside locations. As such, there would be conflict with LP Strategy 7.
9. However, the site is situated close to the main built-up area of Seaton. Indeed, future occupiers of the proposed dwelling would likely be able to walk or cycle to various services and facilities, including a local shop, a primary school, a hospital and a day nursery. Furthermore, regular bus services into the town centre can be accessed via bus stops on Barnards Hill Lane, only a short walk from the site. The topography of the land does rise gently from the town towards the appeal site, however I do not believe that it is severe enough to prevent the majority of people from undertaking the walk or cycle.
10. I acknowledge that the northern section of Barnards Hill Lane, which goes past the appeal site, is effectively a rural lane without a pavement or lighting. However, this section of the road is relatively short and, because part of it is one way, it cannot be used by vehicles as a cut through to Harepath Hill. As such, the number of cars and other vehicles using that part of the road would be limited. I do acknowledge that future occupiers would likely be more tempted to use a private car in the hours of darkness, however, this is likely to be the case in most locations.
11. Taking all of these factors into account, I am satisfied that future occupiers would be able to access a range of services and facilities by sustainable forms of transport, and therefore that there would not be a reliance on the private car. As such, while I have found conflict with LP Strategy 7, I conclude that the proposal would conform with LP Strategy 5B and Policy TC2, which in part seek to ensure that development is located in areas that promote the use of sustainable forms of transport.

Planning Balance

12. The Council has set out that it can demonstrate a four-year supply of deliverable sites for housing, and that its emerging local plan has reached Regulation 18 stage. Therefore, in accordance with Paragraph 11d and footnote 8 of the National Planning Policy Framework (the Framework), the 'tilted balance' does not apply in this case.
13. I have found conflict with LP Strategy 7 with regards to the location of the site. However, the overarching purpose of this policy is to direct new development to sustainable locations. I am of the view that the scope of this conflict is very limited due to the fact that I have not identified any harm in this regard. Indeed, given that a range of services and facilities can be accessed via walking, cycling or through the use of public transport, I consider that the site is in fact in a sustainable location. I have also not found harm in relation to character and appearance.
14. Beyond being in a sustainable location, which weighs heavily in favour of the scheme, the proposed development would provide one new dwelling which would result in some social and economic benefits. Furthermore, it is clear from the evidence that a dwelling, since demolished, was previously located on part of the appeal site, and it is likely that the remainder of the site was used as recreation space associated with that dwelling. Additionally, in more recent years, the appeal site has been used by the residents of Barnards as a private recreation space and is owned by them. It is therefore clearly intrinsically linked to that property and can be considered to be part of its curtilage. As such, it seems logical that the site should be treated as previously developed land (PDL), particularly as there is no substantive evidence before me to suggest that its lawful use is agricultural. The use of PDL for development is encouraged by relevant parts of the Framework, and this issue therefore adds further to the sustainability of the site.
15. When considered in combination, I find that the benefits of the scheme are moderate in nature. As a result, the above material considerations outweigh the very limited conflict with the development plan that I have identified. These considerations indicate that permission should be granted notwithstanding that the development does not accord with LP Strategy 7.

Other Matters

16. The site is within the consultation zone of the Beer Quarry and Caves Special Area of Conservation (SAC). The SAC includes a complex of abandoned mines which is regularly used as a hibernation site by Bechstein's Bats, as well as Lesser and Greater Horseshoe Bats.
17. The artificial lighting associated with the proposed development has the potential to effect commuting patterns of these bat populations. A Lighting Impact Assessment, 2023 (LIA) has been provided which suggests that, with adequate mitigation measures, the lighting levels would be in accordance with the relevant guidance and that there would not be a significant adverse impact on these species. These mitigation measures can be secured via appropriately worded conditions. I note that Natural England has been consulted and has agreed with the conclusions of the LIA.

18. Based on the evidence before me, I therefore find that the proposal would not result in an adverse effect on the SAC or the qualifying species present there.

Conditions

19. I have imposed conditions to identify the relevant timescales and plans in the interests of certainty. Conditions have also been imposed to ensure adequate flood prevention and drainage. Conditions regarding ground levels, materials and landscaping are necessary to preserve character and appearance. Further conditions require a programme of archaeological work in the interests of heritage. A condition has been imposed to maintain the privacy of the occupiers of the neighbouring dwelling known as Barnards. Finally, a series of conditions have been imposed in the interests of ecology, including protected species.

Conclusion

20. For the reasons given, the appeal is allowed.

C Butcher

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, 1805 (Proposed Elevations), 1806 (Proposed Floor Plans), 1807 (East Elevation and Roof Plan and Drainage Plan) and BS2394/11.16/01/JRR (Proposed Site Plan).
- 3) No development shall take place until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. Unless it is demonstrated that it is unfeasible to do so, the scheme shall use appropriate Sustainable Urban Drainage Systems. The drainage scheme shall be designed so that there is no increase in the rate of surface water runoff from the site resulting from the development and so that storm water flows are attenuated. The scheme shall include details of the construction and surface finish for the driveway. Surface water drainage for the development shall be provided in accordance with the approved drainage scheme prior to first occupation of the dwelling and maintained thereafter.
- 4) Notwithstanding the submitted details, foul drainage shall be dealt with by a package sewage treatment plant and drainage field which shall be sited within the application site so as not to cause pollution of any watercourse or water sources. Details of this treatment plant, its siting and the drainage field shall be submitted to and approved in writing by the Local Planning Authority before development commences. The dwelling hereby permitted shall not be occupied until the foul drainage system has been provided in accordance with the approved details.
- 5) Notwithstanding the approved drawings, before any development commences details of final finished floor levels and finished ground levels in relation to a fixed datum shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme as agreed in writing by the Local Planning Authority.
- 7) The development shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) the provision made for analysis, publication and dissemination of results, and archive deposition, has been implemented and confirmed in writing to, and approved by, the Local Planning Authority.
- 8) Notwithstanding the approved plans, no development above foundation level shall take place until a schedule of materials and finishes, and, where so required by the Local Planning Authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development have been submitted to and approved in writing

- by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 9) No development above foundation level shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority; such a scheme shall include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatments. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the Local Planning Authority and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the Local Planning Authority.
 - 10) The dwelling hereby permitted shall not be occupied until a privacy screen at least 1.7 metres tall (measured from the floor of the balcony) has been provided on the eastern edge of the balcony in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority. Thereafter the privacy screen shall remain in place in perpetuity. The privacy screen shall be of sufficient grade to prevent overlooking of Barnards.
 - 11) Development shall be carried out in accordance with the recommendations of the Ecological Impact Assessment prepared by Richard Green Ecology dated May 2023. In particular, the bat and bird boxes described therein shall be provided before the dwelling is first occupied.
 - 12) No internal or external lighting shall be installed at any time other than in strict accordance with the Lighting Impact Assessment prepared by The Lighting Bee (project no. 1105, dated 14 April 2023).
 - 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows, doors, rooflights or other openings other than those shown on the plans hereby permitted shall be formed or enlarged in any elevation or roof slope of the dwelling and no enlargement of the dwelling shall be constructed containing any windows or glazed doors without the prior express consent of the Local Planning Authority.
 - 14) Notwithstanding the provisions of Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no buildings shall be provided within the curtilage of the dwelling without the prior express consent of the Local Planning Authority.