
Appeal Decision

Site visit made on 17 February 2025

by **J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 March 2025

Appeal Ref: APP/U1105/W/24/3355874

Land at Back Lane, Newton Poppleford, Devon EX10 0DH

- 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 M Ward against the decision of East Devon District Council.
 - The application Ref is 24/0641/FUL.
 - The development proposed is a new detached dwelling and garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. Comments of the main parties have been sought and consideration has been given to those received in reaching the appeal decision.

Main Issues

3. The main issues in this case are:-
 - the effect of the scheme on the character and appearance of the area having particular regard to it being within the East Devon National Landscape;
 - the effect upon protected species and their habitats;
 - whether the scheme would be in a suitable location for residential development; and
 - whether the loss of Grade 1 agricultural land would be justified.

Reasons

Character and Appearance

4. The appeal site is an approximately triangular shaped paddock positioned on a steeply sloping hillside to the northern side of Back Lane. This narrow road is mostly bounded to either side by mature hedges and hedgebanks, and forms a defined edge to the village. To the southern side of the lane there is a residential estate comprising mostly detached houses of similar ages and styles, whilst to the northern side there is a disparate scatter of residential properties that are separated by paddocks and fields. Beyond these houses and their gardens are fields, some of which are pasture with others being orchards.

5. To the westernmost corner of the appeal site is an existing gated vehicular access and it is adjacent to the public footpath that provides access from the village into the countryside. This footpath forms one of the boundaries to the site, being separated from it by a wire fence. Beyond the access there is a levelled gravelled hardstanding that forms a banked edge above and to the immediate rear of the hedgerow trees along Back Lane. Part of the hardstanding is being used for miscellaneous storage, including pallets and trailers. There is also a timber shed near to the northern tip of the site, as well as a variety of timber structures and small shelters.
6. The site is within the East Devon National Landscape (NL), and the rolling hills are a distinctive feature of the area. The striking topography provides views of the attractive interplay of villages positioned mostly within valleys in a predominantly rural landscape, and this and the numerous hedges and hedgebanks, many of which are mixed native species, creates a distinct character and appearance to the NL. The hedges and hedgebanks form verdant enclosures to the roads and fields, creating leafy skylines as well as being wildlife habitats. They are an intrinsic element of the special qualities of the NL, contributing to the tranquil, verdant, rural nature of the area.
7. The proposed dwelling would be positioned close to the public footpath, with a detached garage near to the eastern corner of the site. Although it would be set into the hillside, the large size and the height of the house would make it an imposing and intrusively prominent addition to the northern side of Back Lane. Set apart from the house would be a large, detached garage, and a bank of solar panels. Building and structures would range across much of the site. The large size and dominance of the house and garage, along with the spread of associated hardstandings and residential paraphernalia, would appear conspicuously intrusive in an area where the open landscape dominates. Although there are small, scattered clusters of houses to the north of Back Lane, that proposed would not be part of any of these as it would be surrounded to either side and above by fields and paddocks. Nor would it appear as part of the residential estate to the south as it is separated from it by the lane and its hedges, and by being higher up the hillside. Given this, the harmful prominence and disruptive impact of the scheme would be exaggerated.
8. Furthermore, the house has been designed to capitalise on the expansive and attractive views that would be available to future occupiers. It would have a strong horizontal emphasis with numerous large, glazed windows looking out across the valley, and rather than having a conventional style as is found in the nearby dwellings, it would have a striking form. The number and size of the windows and the solar panels would exaggerate the prominence of the building and the residential use of the site as they would reflect sunlight during the day whilst at night there would be the intrusive impact of illuminated rooms. The windows and any external lighting would erode the dark skies that are part of the special qualities of the NL. As the house and garage would be set apart in both distance and height from the residential estate below, the size and position of the buildings and the solar panels would form a prominent and incongruous addition to the area, thereby unacceptably eroding the tranquil, rural, undeveloped nature of this part of the NL.
9. The appellant considers the scheme would be well screened with reliance being placed on the existing trees and hedges to maintain the leafy skylines that are a

characteristic of this part of the NL. However, the trees within the centre of the site have already been felled, and laurel hedging has been planted next to the footpath. There is more laurel hedging along the Back Lane boundary, and sections of the native hedgerow to the northern tip of the site have been removed. In addition, the new access would result in the further loss of the mixed native hedgebank along Back Lane. There might be some compensatory planting to either side of the visibility splays as well as the planting of specimen fruit trees, but the retention of existing hedges nor the proposed planting would mitigate the loss of the open nature of the site and the contribution it makes to the landscape qualities of the area. The laurel planting has an overtly domestic appearance due to its monotonous evergreen nature, and as it grows, it would form a conspicuously strident contrast to the diverse variety of the mixed native hedges that are such a local feature, as well as forming a dense, defensive boundary to the public footpath. Moreover, landscaping cannot be relied upon to screen a development for its lifetime, and particularly so in this instance given that it would screen the attractive panoramic views that would be available to future occupiers.

10. For these reasons, the scheme would unacceptably harm the character and appearance of the area, intruding residential buildings and uses into an open countryside position to the detriment of the NL. This harm would conflict with the Framework as it requires great weight to be given to conserving and enhancing the landscape and scenic beauty of NLs, and also with the requirements of Strategies 7 and 46, and Policies D1 and D3 of the East Devon Local Plan (2016) (LP) and Policies EP1 and Policy TH1 of the Newton Poppleford and Hapford Parish Neighbourhood Plan (2021) (NP). As these seek, amongst other things, development in the countryside that would not harm the distinctive landscape and environmental qualities within which it is located, that which conserves, enhances, and does not undermine the NL's landscape quality and key characteristics, and that which proposes the retention and protection of existing trees and hedges, the scheme would fail to accord with these requirements.

Protected Species

11. The Preliminary Ecological Appraisal (2024) (PEA) has identified an active badger sett within the site. In addition to the badgers, the PEA has referred to the native hedges providing a foraging and dispersal habitat for bats and that there could be the potential for roosts adjacent to the site boundary, with dormice also likely to be present, as well as hedgehogs and reptiles.
12. The presence of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 – Biodiversity and Geological Conservation makes it clear that the presence of a protected species is a material consideration when development is being considered. In this case the site supports a protected species and is likely to support others. Extensive site clearance has already occurred, as has the planting of non-native hedges. Notwithstanding the provision of a nature reserve area, no detail of where and how a replacement badger sett would be provided and how it would accord with the residential use, nor whether the reserve could even accommodate such a large existing sett that spreads across much of the site.
13. Moreover, the PEA references the likely presence of other protected species many of which are also reliant upon the native trees and hedges. No survey has been undertaken to ascertain the presence of these species and how they use the site

and the surrounding area, nor has it been shown how the development would impact upon them and their habitats. There would be a further loss of native hedges, and the presence of the laurel would not compensate for this, and any additional planting would take many years if ever to have a similar habitat benefit. How the development would protect, conserve and enhance any protected species and their habitats remains at best ambiguous.

14. The requirements of the Framework are that the planning system should contribute to and enhance the natural environment and minimise impacts upon biodiversity. Such objectives should be integral to informing a proposal, but it remains unclear as to how this could be successfully accommodated in this case. Whilst the appellant suggests a sensibly worded condition to provide for a detailed landscaping plan, Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Conditioning landscaping details and the provision of a replacement badger sett, bird, and bat boxes, would not provide sufficient certainty that any of these species would be protected.
15. For these reasons, the scheme has failed to demonstrate that protected species and their habitats would not be harmed by the development, and the suggested conditions would not overcome these fundamental uncertainties. The proposal would fail to accord with LP Strategy 47, and Policies D3 and EN5, and NP Policy TH1, as these require amongst other things, that applications should be accompanied by a survey assessing the presence of protected species and, if present, the proposal must be sensitive to, and make provision for their needs, that trees and hedges of value as wildlife habitats and biodiversity would not be removed, that development does not result in a net loss in the quality of trees or hedges, and that sites supporting important wildlife habitats or features will be protected from development proposals where it would result in a loss of or damage to their nature conservation value.

Location

16. LP Strategy 1 defines the settlement hierarchy and development strategy for the Council's area, focusing development to the larger towns and villages, with lower growth in rural areas which meets local needs. LP Strategy 3 seeks sustainable development, including the prudent use of natural resources, with LP Strategy 7 requiring that development in the countryside should not harm the distinctive landscape. There is no disagreement between the main parties that the appeal site is within the countryside, albeit the appellant emphasises it would be adjacent to the settlement, being close to the variety of services and facilities within the village.
17. Although there is a public footpath near to the site that provides access to the village via the nearby residential estate, walking along this enclosed and narrow footpath would not be an attractive option for some, particularly given the distances to services and facilities and the gradient of the hills. There is no footway to Back Lane, nor is it lit, and its narrow nature would create potential for conflict with vehicles due to the enclosure of the lane with mature hedges and the absence of many passing places. Whether used by pedestrians or cyclists the lane would not provide a convenient and safe alternative to the private car.

18. Although the Framework supports the principle of self-build homes, it is also the case that the Framework strictly controls development in the countryside, and for the reasons given above, including the harm to the NL, the provision of even a self-build home in such a location would not outweigh the harms that would arise.
19. Thus, for these reasons the dwelling would not be in a suitable location for residential development, and would be in conflict with the above referenced LP Strategies and Policies, and also with the requirements of LP Strategy 5B and Policy TC2, which seek to promote and secure sustainable modes of travel, and that new development should be located to be accessible by pedestrians, cyclists and public transport and to minimise the need to travel by car.

Agricultural Land

20. Under the Agricultural Land Classification the appeal site is Grade 1 land, with this land being the best and most versatile. The Framework requires recognition of the benefits of such land, including its economic ones, a stance that is reiterated in LP Policy EN13 which seeks to protect the best and most versatile agricultural land from development, unless in exceptional circumstances if there is an overriding need for the development.
21. The appellant considers the land too small to contribute in a meaningful way to modern agriculture, and that it cannot be the best and most versatile land due to its gradient. Nevertheless, from the evidence provided the site is designated as Grade 1, and the size and gradient of the site did not preclude use of it for tree planting, nor does either of these characteristics negate a future use for agriculture as evidenced by the surrounding fields and paddocks, including those planted with orchards.
22. The scheme may provide a dwelling at a time when the Council has no five year housing land supply, but such a benefit is not an exceptional circumstance providing an overriding need to develop the site as required by the above referenced LP Policy, particularly so in this instance as it has not been demonstrated whether there are other lower graded alternative plots available to accommodate a single dwelling.
23. The appellant has referred to a recent appeal decision (appeal ref: APP/U1105/W/24/3345084) and the development of the nearby residential estate that have both occurred on Grade 1 land. The planning history and circumstances for this estate have not been provided, but as it is a large residential estate rather than a single dwelling, the comparisons that can be made are limited. As regards the appeal decision, this was for a change of use of land to residential garden, with the Inspector finding the land not in an agricultural use and the size of the site to be too small to make a meaningful contribution to food production. Notwithstanding this, surrounding the appeal site there are other small grassland paddocks, areas of non-native woodlands, and also orchards, all of which demonstrate that agricultural uses could occur on the site. Given these differences, neither comparison forms a binding precedent for allowing the appeal.
24. For these reasons the loss of Grade 1 agricultural land has not been justified, and the scheme would thereby fail to accord with national and local policy that seeks to protect the best and most versatile agricultural land.

Other Matters

25. *Habitat Sites.* The site is within 10 kilometres of the Pebblebed Heaths Special Protection Area (SPA) and Special Area of Conservation (SAC). These habitat sites are of international importance, and are thereby protected by the Conservation of Habitats and Species Regulations (2017) (the Regulations). The designations recognise the wet and dry heathland vegetation that supports a diversity of species and associated communities that include rare insects and birds. Natural England has advised that the heaths are under significant pressure from increased public access and use, and that a net increase in the number of dwellings and occupiers in the area would have an adverse effect upon these important habitat sites and species. As explained in the South-east Devon European Site Mitigation Strategy (2014), all residential development within 10 kilometres of any part of the SAC and SPA is required to provide mitigation for these adverse effects, and this can include through a Section 111 agreement.
26. Given the location of the scheme, future occupiers of the dwelling could visit the habitat sites, and this use would have an adverse effect upon their integrity. The Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to occur with the appeal. A signed and dated Section 111 agreement was provided with the original application which the Council considers has secured the required habitat mitigation. The matter of undertaking AAs for the appeal will be returned to later.
27. *Other Matters.* Local residents have raised a number of other matters, including the creation of a precedent, highways and public footpath safety, flooding and pollution, and loss of privacy. As each case is considered on its particular merits and circumstances, it does not follow that a precedent will be set by the scheme. As regards the other matters, following the findings on the main issues there is no need to consider these further.

Planning Balance

28. The Council cannot demonstrate a 5-year housing land supply, and an additional family home would make a small but important contribution given the level of shortfall of provision in the Council's area (at about 2.97 years). The appellant has referred to several benefits arising from the scheme, including an additional dwelling close to a large village on a windfall site, and one which would be a self-build energy efficient home that could be delivered quickly.
29. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. Irrespective of the Council's housing land supply shortfall, the policies within the Framework that protect assets of particular importance, in this case the National Landscape, provides a strong reason for refusing the scheme.
30. If the appeal was to be allowed, it would have been necessary to undertake AAs and give further consideration to the likely effectiveness of mitigation and avoidance measures for the Pebblebed Heaths habitat sites. In doing so the provisions of the S111 would have to be scrutinised to ensure that the integrity of the habitat sites would not be adversely affected. However, as the appeal is being dismissed for other reasons, this has not been necessary.

Conclusion

31. There would be conflict with the development plan when considered as a whole, and there are no other considerations, including the requirements of the Framework, that outweigh this finding. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR