



Appeal Decision

Site visit made on 23 April 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 May 2025

Appeal Ref: APP/U1105/W/24/3355019

Tritchayne Farm Cottages, Colyton, Devon EX24 6SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Slater against the decision of East Devon District Council.
 - The application Ref is 24/0782/VAR.
 - The application sought planning permission for conversion of redundant farm buildings to holiday let units without complying with a condition attached to planning permission Ref 7/79/00/P0545/00155, dated 15th June 2000.
 - The condition in dispute is No 4 which states that: *'The units hereby permitted shall only be occupied as holiday accommodation'*.
 - The reason given for the condition is: *'To ensure that the accommodation is not used permanently for residential purposes which would be contrary to the provisions of the Devon Structure Plan First Review.'*
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to 5 units of holiday accommodation that were previously granted planning permission through the conversion of redundant farm buildings. It seeks to remove a holiday condition attached to that permission which refers to holiday let units in the description. Nevertheless, having paid regard to the various judgements referred to by the parties and the Planning Practice Guidance (PPG), if the condition were to be removed, the operative part of the development, being 5 residential units, would remain permitted, albeit the units would not be subject to any restrictive condition. Both main parties are in agreement that the appropriateness of a Section 73 application is not a matter of contention.
3. The main issue is whether the units are suitable for permanent residential accommodation having regard to local and national policy concerning dwellings in the open countryside and their accessibility to local services.

Reasons

4. The appeal site is located in the countryside, about a mile away from the nearest settlement which has some services and education facilities. The connecting road network is made up of narrow, rural lanes that are not lit or paved. Walking or cycling would not be an inviting option for all road users, particularly in times of dark or inclement weather conditions. The Council says there is no bus service in

the area, and I find no reason to disagree. It is therefore likely that the private motor vehicle would be used by future residents.

5. The appellant says that the proposal is not development as the use remains residential, and disputes whether there is a need to have regard to the development plan. In respect of the latter point, section 38(6) of the Planning and Compulsory Purchase Act 2004 of the Town and Country Planning Act 1990 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In terms of a use change or otherwise, the Planning Practice Guidance says that a *change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; however, it is linked to the significance of a change and the resulting impact on the use of land and buildings. Whether a material change of use has taken place is a matter of fact and degree and this will be determined on the individual merits of a case.*
7. In that respect, the appeal site is isolated and none of the circumstances set out in paragraph 84 of the National Planning Policy Framework (the Framework) for allowing homes in the countryside, would apply to this appeal. Having paid regard to the Appledore appeal¹, while the units are already in a residential use, the attached disputed condition restricts them from being used as permanent homes.
8. Typically, those occupiers of permanent homes would want to extend, or make personalised alterations to their properties. Additionally, they would be likely to expect a certain level of attached private garden space, or close vehicular parking. They may also wish to develop outbuildings or have areas to locate other residential paraphernalia, all of which would be noticeable for 5 dwellings. On the other hand, those using holiday accommodation would be likely to be less concerned with either carrying out such operations, or indeed, the absence of such features.
9. In this case, the shared path and courtyard of the 5 units is arranged cheek by jowl, where very limited, open outdoor space separates them. Immediately connected garden space is very limited and lacks privacy. Moreover, the parking is set well apart from the unit's frontages. The current layout of the appeal site provides for a specific holiday use, rather than for permanent homes. As such, the character and use of the appeal site could significantly alter if the condition were to be removed.
10. Prior to the *Reid* judgement, a previous Inspector noted in an appeal² on this site that the alteration of 1 of the holiday units for occupation as a site manager would not involve a material change of use. However, that proposal was materially different and not comparable with this scheme which would alter all 5 units and the whole nature of the use of the site. The more recent *Reid* case referred to by the appellant concerned a far larger quantum and scale of development that had not been completed. These circumstances are not directly comparable with this appeal. Nevertheless, for the reasons given, the significance of altering all 5 of the small units of accommodation would be likely, as a matter of fact and degree, to materially change their use, thus constituting development.

¹ APP/U1105/W/18/3195007

² APP/U1105/W/14/3001628

11. With that in mind, the bulk of the Council's housing provision is directed towards its largest settlements to promote an inclusive society where people have access to jobs, services and amenities. This is set out in strategies 1 and 2 of the East Devon Local Plan 2016 (LP).
12. Strategy 7 of the LP is concerned with development in the countryside. Schemes will only be supported, where, amongst other things, specific local or neighbourhood plan policies explicitly permit such development. However, no such local policies have been advanced in support of this appeal. Therefore, for the reasons given, the effect of granting planning permission for this proposal could lead to a development of isolated homes in the countryside, which the Council's overarching housing strategy and Framework seek to avoid.
13. Turning to the accessibility of services and facilities, Strategy 5B of the LP promotes sustainable modes of travel and transport such as walking, cycling and public transport. Additionally, LP Policy TC2 says that new development should be located so as to be accessible by pedestrians, cyclists and public transport to minimise the need to travel by car. While LP Policy TC2 refers to 'new' development, these policies are consistent with paragraphs 115 and 117 of the Framework which say, in this respect, that in assessing specific applications it should be ensured that sustainable modes of transport are prioritised taking account of its location; and where priority is given first to pedestrian and cycle movements.
14. The disputed condition sets no specific time limits on the holiday occupation, neither does it require a maintained register of occupiers. It is therefore conceivable that guests could stay for prolonged periods. In light of this it is claimed that there is little difference in travel patterns between the occupation of the units for holiday purposes or permanent accommodation. However, there is very little to show that all of the current holiday lets have been generating occupation levels comparable with 5 permanent residences.
15. There may be some similarities between trips generated from the holiday lets and unrestricted units in terms of accessing shops, pubs and other facilities. Notwithstanding the lack of evidence provided by the Council in this regard, and despite the age of the decision and a change in ownership, I agree with the previous Inspector's³ conclusions at this site in respect of the intensity of use. That is, the reliance on all services, including, schools and public transport, as well as health care services to meet the day to day needs of occupiers living as their main home would be likely to be greater than for those on holiday.
16. The effect of this would be significantly amplified by the introduction of 5 unrestricted residential units. In the absence of any compelling evidence to the contrary, and for the reasons given, it is more likely that 5 unrestricted residential units in this location would generate a greater intensity of traffic movements than the holiday lets. Consequently, even though schools could be supported to help maintain or enhance the vitality of the rural community, the removal of the condition would be likely to exacerbate the need to travel by car. Sustainable transport modes would not be prioritised.
17. For the reasons given, the units are not suitable for permanent residential accommodation having regard to local and national policy concerning dwellings in

³ APP/U1105/W/14/3001628

the open countryside and their accessibility to local services. As such, there would be conflict with strategies 1, 2, 5B, and 7, and Policy TC2 of the LP.

Other Matters

18. The Council notes that the appeal site is in a landscape connectivity zone associated with the Beer Quarry and Caves Special Area of Conservation. It adds that there would be no landscape scale impacts or any impact on a pinch point or existing mitigation figure, and that guidance indicates that there is unlikely to be a significant effect, meaning a detailed Habitats Regulations Assessment is not required. I find no reason to disagree.
19. In the context of LP Policy TC2, my attention has been drawn to an appeal decision at Appledore Farm⁴ where a previous Inspector found no conflict with the policy as a residential use was already existing and that there was no evidence any increase in travel would be significant. However, that proposal was in a different location, and I am not aware of the site-specific circumstances that led to those conclusions, particularly in respect of the intensity of travel movements. Moreover, that scheme resulted in 1 unrestricted residential unit gained from 2 holiday lets. It is materially different to this appeal proposal and not comparable.
20. The appellant has referred to a number of policies in the LP which have not been disputed by the Council. However, the absence of an objection in this regard does not render the scheme acceptable. Additionally, the lack of reference to a specific policy in the reason for the original condition is noted, though the proposal has been assessed in accordance with the current development plan and the policies identified by the Council.

Planning Balance

21. It has been brought to my attention that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, where there is a current supply of 2.97 years. Paragraph 11 (d) of the Framework indicates that where the required supply cannot be demonstrated, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. This presumption would not apply where policies in the Framework that protect areas such as National Landscapes provide a strong reason for refusing the development proposed. I am satisfied that the proposal would not harmfully affect the character or tranquillity of the landscape. Therefore, there would be no strong reason for refusing the development in respect of protected areas.
23. The proposal could lead to 5 homes which would bolster the Council's housing land supply position as highlighted by the appellant. However, it is important that development happens in the right places and the Framework explains in paragraph 11 d) ii. that particular regard is paid to key policies for directing development to sustainable locations. Such provisions identified in footnote 9 are set out in paragraphs 84 and 115.
24. Paragraph 84 of the Framework explains that decisions should avoid isolated homes in the countryside. I consider that the proposal could lead to 5 isolated homes and none of the circumstances for allowing these homes would apply. As

⁴ Appeal Ref: APP/U1105/W/18/3195007

such, the scheme would be in conflict with national planning policy. Furthermore, the effect of removing the disputed condition would be likely to intensify private motor vehicle use in a location with poor access to services and facilities. This would not prioritise sustainable transport modes and conflicts with paragraphs 115 and 117 of the Framework.

25. The social benefits of housing delivery carry significant weight. Future occupants could make use of education facilities in nearby settlements to help maintain the vitality of rural communities as set out in paragraph 83 of the Framework. There would also be some modest benefit to the local economy through consumer spend linked with an unfettered permission.
26. Against these benefits I need to balance the adverse impacts. The need to deliver sustainable patterns of growth is an important consideration and one which is embedded in the Framework. The harm arising from the relatively poor access to services and facilities by sustainable transport modes would run contrary to the social and environmental objectives of sustainable development. This adverse impact would significantly and demonstrably outweigh the benefits of the scheme. As such, the proposal would not benefit from the presumption in favour of sustainable development set out within Framework paragraph 11.

Conclusion

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
28. I have found that there would be conflict with the development plan as a whole. Furthermore, even when considered cumulatively, the weight given to the other considerations would not outweigh the identified harm. Accordingly, other considerations do not therefore indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed.

J Hills

INSPECTOR