



Appeal Decision

Site visit made on 1 April 2025

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/W1145/W/24/3356800

Windy Cross Farm (Road From Woodacott Cross To Windy Cross), Thornbury, Devon EX22 7BZ

- 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. Dixon against the decision of Torridge District Council.
 - The application Ref is 1/0778/2024/FUL.
 - The development proposed is described on the planning application form as 'reinstatement and extension of dwelling following fire'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 12 December 2024 a revised National Planning Policy Framework (the Framework) was published. The main parties have been given the opportunity to make comments on the implications of the updated Framework for this appeal and I have taken the comments into account in my considerations.

Main Issues

3. The main issues in this appeal are:
 - Whether on the evidence before me, the use of the property has been abandoned, such that the proposal is for a new dwelling;
 - Whether the appeal site is in a suitable location for housing with regard to the development plan; and
 - Whether there are any material considerations which would outweigh any identified harm.

Reasons

Abandonment

4. Abandonment of a use, involves a cessation of use in such a way and for such a time as to give the impression to a reasonable onlooker, applying an objective rather than a subjective test, that it was not to be resumed. Case law¹ has established that there are four criteria applicable to determining whether a use has been abandoned. These are: 1) the period of non-use; 2) whether there has been

¹ In Trustees of Castell-y-Mynach Estate v Taff-Ely BC [1985] JPL 40

- any other use; 3) the physical condition of the building; and 4) the owner's intentions as to whether to suspend the use or to cease it permanently.
5. With regards to the *period of non-use*, the Council indicates that the property had been unoccupied since March 2006 when the occupier moved in with family in the adjacent bungalow. In 2017 the property was transferred to beneficiaries and then purchased by the current appellant in 2022. At the time of the fire, the property had been unoccupied for a period in excess of 15 years. This is not disputed by the appellant. There is no evidence before me that the building had been in *any other use* during the intervening period.
 6. With regards to the *physical condition of the building*, the property is not currently habitable as a result of the fire in 2022. However, the Council say that even prior to the fire, it was uninhabitable and in a very poor state of repair. The appellant confirms that it was uninhabitable due to disrepair² and the Heritage Statement (HS)³ states that at the time application 1/0966/2019/FUL⁴ was submitted, the property was unsafe, had been vacant for the last ten years and left to deteriorate with extensive damp and collapsing ceilings. The evidence before me indicates that even prior to the fire, the building was not capable of residential occupation due to its physical condition.
 7. Turning to *the owner's intentions as to whether to suspend the use or to cease it permanently*, the appellant states that Council Tax payments were still being made until November 2022 and that the previous owner and current appellant made genuine efforts to retain the residential use of the appeal site through a series of planning applications. However, with the exception of the planning permission granted following the fire⁵, the other planning applications related to the demolition of the dwelling and its replacement with a new dwelling or dwellings⁶. There is no evidence from the appellant that they, or the previous owners, undertook any works to repair the property. Together, this indicates that there was a desire to redevelop the site. This is not the same as an intention to occupy the building as a dwelling.
 8. Based on the evidence before me, and notwithstanding that there has been no other intervening use, I conclude that the physical condition of the building, a period of non-use exceeding fifteen years and no clear intention to use the building as a dwelling, indicate to a reasonable onlooker that the use of the building as a dwelling has been abandoned. The appeal proposal would therefore amount to the provision of a new dwelling.

Location

9. The appeal site is located in the open countryside and is occupied by the remains of a building. A small part of the western end of the building has three walls and a roof. The eastern end of the building has two ground floor walls. However, the two parts are not connected together. The floor slab is visible but the rear elevation and around half of the front elevation is missing. There is no first floor or roof structure. What remains on the appeal site is not capable of reuse or conversion to a dwelling

² Paragraph 3.1.1 of the Appellant's Statement of Case

³ Paragraph 1.2 of the Heritage Statement carried out by South West Archaeology Ltd dated 11 November 2023

⁴ Demolition of existing dwelling and erection of new dwelling

⁵ LPA Ref: 1/1144/2023/FUL Reinstatement and extension of existing dwelling

⁶ LPA Ref: 1/0872/2017/OUT Outline application with all matters reserved to replace existing dwelling and outbuildings with three dwellings; LPA Ref: 1/0966/2019/FUL Demolition of existing dwelling and erection of new dwelling; and LPA Ref: 1/0557/2024/OUT Outline application for the erection of two no. dwellings to replace existing dwelling with all matters reserved

and therefore Policy DM27 of the North Devon and Torridge Local Plan 2011-2031, adopted October 2018 (LP) is not relevant to the proposal before me.

10. Policy DM26 of the LP permits replacement dwellings in the countryside. The supporting text states that this relates to properties which are dilapidated or obsolescent and not suitable for improvement or alteration but that it does not apply to derelict buildings where the residential use has been abandoned.
11. What remains on the site goes beyond what could reasonably be described as dilapidated, obsolescent and even derelict. In my view these words are used to describe a building which exists in substance but is in a very poor condition, needing extensive repairs. However, in this case, what is before me consists of two areas of fragmented wall which do not have the shape or form of a recognisable building. I have also concluded above that the use of the building as a dwelling has been abandoned. Policy DM26 of the LP is therefore not relevant to the proposal before me.
12. Outside of the Local Centres, Villages or Rural Settlements referred to in Policy ST07 of the LP, development is limited to that which meets a local economic and social need, the reuse of rural buildings and development which is necessarily limited to a countryside location. This is to ensure, insofar as is relevant to this appeal, that development does not exacerbate the areas dispersed settlement pattern and that any conflicts with sustainable development are minimised.
13. The appeal relates to the provision of an open market dwelling. There is no evidence before me that its provision would meet a local economic and social need nor that the development of an open market dwelling can only occur in a countryside location. I have also set out above that the proposal would not amount to the reuse of a building.
14. The Council say that Holsworthy, approximately 6 kilometres away, is the closest settlement with services. Given the distance involved and lack of a bus service, residents of the appeal site would be heavily car dependent for the majority of trips.
15. I therefore find that the proposal would introduce housing into the countryside in a way which would exacerbate the dispersed settlement pattern. This would conflict with Policy ST07 of the LP. This would harmfully undermine the spatial strategy for the location of housing contained in the development plan.

Other considerations

16. The building suffered substantial fire damage in 2022. This has contributed to its current form. However, when the Council granted consent for the reinstatement and extension of the existing dwelling⁷ following the fire, around 50% of the structural walling had survived so a good proportion of the original fabric of the building was in place. That planning application was accompanied by the HS which indicated that certain elements of the building had medieval origins, which were of historic significance. The permission sought to retain and incorporate the remaining historic fabric into the approved scheme, in accordance with Paragraph 84 of the National Planning Policy Framework (the Framework).
17. Following the grant of planning permission, I understand that the appellant undertook some site clearance in order for the structural assessment required by

⁷ LPA Ref: 1/1144/2023/FUL Reinstatement and extension of existing dwelling

condition 5 of the planning permission to be carried out. Whilst I acknowledge that the loss of further historic fabric as a result was unintended, carrying out clearance work to a building which was in a precarious state without the involvement of a structural engineer was unwise. It led to the loss of much of the remaining historic fabric and the building's further demise.

18. Paragraph 216 of the Framework requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account. The Council say that so little of the original medieval building now remains that the building is no longer a non-designated heritage asset and there would be no heritage merit in the appeal proposal.
19. The appeal is not accompanied by an updated Heritage Statement setting out what key elements remain. Moreover, the structural report submitted with the application advises that even to incorporate what remains of the building into the proposed scheme 'would require substantial temporary work which would require additional loss of fabric'. This casts significant doubt on the appellant's claim that incorporating what is left of the building into the new dwelling would mean that key elements and surviving fabric would be retained, provide a link to the past and better reveal the significance of the remains. From all that I have seen and read, I find that what remains on site has negligible heritage significance.
20. Whilst the dismissal of this appeal would most likely result in the complete loss of the remaining parts of the former building, I find that the scale of harm to what is left of the non-designated heritage asset would also be negligible.
21. The collection of buildings at Windy Cross, both modern and traditional, are sited sporadically around a staggered crossroads. Some are located close to the road edge and others set well back. This results in informal spacing between the properties. In this context, rebuilding a dwelling on the appeal site is not necessary to preserve the specific identity of the settlement.
22. The new building would incorporate measures for renewable energy generation and enhanced insulation standards. However, the full details of these and the overall benefits which would arise have not been fully demonstrated and therefore I give this limited weight.
23. The appellant states that the proposal would provide a home for a family with deep local ties but there is nothing before me to secure local occupancy and therefore I have given this limited weight.
24. The appellant points to the support from the parish council⁸ but I note that their comments relate to the earlier proposal⁹ and not the one before me. The parish council consultation response to the proposal before me suggests that the site is an eyesore. The Council have powers to require untidy land to be improved and therefore I give very limited weight to the development of the new dwelling as a means of achieving this.
25. The Council cannot demonstrate a five year housing land supply. Paragraph 11d) of the Framework is therefore relevant and I address this in the planning balance below.

⁸ Appendix 2 of the Appellant's Statement of Case

⁹ LPA Ref: 1/1144/2023/FUL

Planning Balance

26. I have found that the proposal would not be in a suitable location for new housing and that allowing this appeal would harmfully undermine the spatial strategy for the location of housing. The proposal would therefore conflict with the development plan as a whole. However, because of the housing land supply position, Paragraph 11d) of the Framework is relevant.
27. As a result, the development plan policies which are most important for determining this appeal are deemed out of date although due weight should be given to them according to their degree of consistency with the Framework. There appears to be no dispute that Paragraph 84 of the Framework is relevant to the proposal before me. This seeks to avoid isolated new homes in the countryside unless they would represent the optimal viable use of a heritage asset or secure its future or re-use redundant or disused buildings and enhance their immediate setting. I therefore find that Policy ST07 of the LP is largely consistent with the Framework and in this instance, I have afforded it significant weight.
28. The housing shortfall is around 190 dwellings. Paragraph 61 of the Framework seeks to significantly boost the supply of homes. This proposal would result in the creation of a single dwelling and would therefore make a useful but limited contribution to housing supply overall.
29. There would be benefits arising from the construction and occupation of the dwelling to the local economy. However, the extent to which this would maintain the vitality of the rural community and support local services, as reflected in Paragraph 83 of the Framework, has not been demonstrated.
30. Paragraph 129 of the Framework promotes the efficient use of land, taking account of the availability of services and the scope to promote sustainable travel modes that limit future car use. Given my findings above, the appeal proposal would not achieve this.
31. With reference to Paragraph 11 d) ii) of the Framework I find that the adverse impact arising from the proposal's conflict with the development plan, would significantly and demonstrably outweigh the limited benefits when assessed against the policies in the Framework taken as a whole having particular regard to key policies for directing development to sustainable locations. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

32. The proposed development would be contrary to the development plan as a whole and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal is dismissed.

Alison Fish

INSPECTOR