



Appeal Decision

Site visit made on 9 May 2025

by **B J Sims BSc (Hons) CEng MICE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

Appeal Ref: APP/U1105/W/25/3359249

Sandyway, Kerswell, Cullompton, Devon, EX15 2EJ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Steiner against the decision of East Devon District Council.
 - The application Ref is 24/1116/OUT.
 - The development proposed is the erection of a self-build dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the application and appeal are in outline, the matter of access is for consideration in detail at this stage.

Main Issues

3. I consider the main issues in the appeal to be:
 - i. the principle of the proposal with respect to current adopted planning policy regarding the location of development;
 - ii. the effect the proposed dwelling would have on the site and surrounding countryside; and
 - iii. whether there are other material considerations in favour of the proposed development.

Reasons

Principle

4. Sandyway is situated at the southern edge of the small hamlet of Kerswell and the 0.097ha appeal site comprises mainly its side garden and amounts to over half the present curtilage, such that the proposed dwelling would extend built development southward into the open countryside.
5. Kerswell lacks community facilities and is not nominated as a sustainable location for new residential development in either the adopted East Devon Villages Plan or the East Devon Local Plan (EDLP) adopted in 2016, such that the development would be contrary to Strategic Policies 1, 2, 6 and 7 of the EDLP, which together, consistent with the National Planning Policy Framework (NPPF), resist new

housing development outside built up area boundaries, in order to protect the rural character of the countryside.

6. Accordingly, it is trite planning law, under section 38(6) of the Planning and Compulsory Purchase Act 2004, that this appeal should be dismissed unless other material considerations indicate otherwise.

Character and Appearance

7. As well as being thus contrary to the development plan in principle, the proposed house would occupy much of the present side garden to Sandyway which currently serves as a transition between the hamlet and the open agricultural fields around it. This would be directly harmful to the rural character of the locality in further conflict with Strategic Policy 7, notwithstanding that the area is not covered by any particular protective landscape designation. In my view, it follows that there would also be a degree of conflict with Policy D1 of the EDLP with respect to design and local distinctiveness, despite the Council finding neutrality in this particular regard.

Other Material Considerations

8. The first other material consideration is the NPPF itself. At paragraph 11d and Footnote 8, the NPPF introduces the so-called tilted balance whereby, if the policies which are most important for determining the application [and thus an appeal] are out-of-date, including if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole. That includes having particular regard to key policies for directing development to sustainable locations and making effective use of land.
9. In relation to this appeal, there is no dispute that, under current national policy for the supply of homes, East Devon District Council is presently unable to demonstrate more than 2.97 years housing land supply, representing a significant shortfall with respect to the requisite five years supply.
10. The NPPF contains a range of provisions requiring development to be sustainably located, with high-quality design, to protect the natural environment, landscape, local character and distinctiveness, with which the EDLP is essentially consistent. However, I bear in mind that, since the EDLP was adopted there has been a policy trend in favour of a more permissive approach to new dwellings in or near rural communities or settlements but outside main towns and villages. Moreover, the Self-build and Custom Housebuilding Act 2015 and associated Regulations of 2016 require local plans to include quantified provision for self-build homes and local planning authorities to keep a register of individuals or organisations expressing an interest in such development.
11. The EDLP is silent in terms of self-build or rural windfall homes, apart from policy encouragement for housing developments to make ten percent of their plots available to small or self-build developers.
12. Thus, for reasons of the housing land supply of less than five years and the absence of some policies important to the determination of the appeal, the tilted balance must be applied in this case.

13. With specific reference to rural housing, the NPPF, at paragraph 82, states that planning decisions in rural areas should be responsive to local circumstances and needs. Paragraph 83 promotes sustainable rural housing to enhance or maintain the vitality of individual or groups of rural communities. But paragraph 84 states that isolated homes in the countryside should be avoided, subject to exceptions none of which are applicable in this case.
14. The East Devon Villages Plan is compliant with NPPF Paragraph 83 in identifying settlements for development but it is appropriate to consider further the questions of isolation and local needs.
15. Under the *Braintree*¹ judgment, quoted by the Appellants, Sandyway and the appeal site would not be regarded as isolated because they do not sit alone surrounded by open countryside but are in proximity to other built development of the Kerswell hamlet. However, Kerswell itself is isolated in the normal meaning of that word, having no public transport or community facilities within the hamlet or accessible within a reasonable distance. I therefore judge the degree of isolation of the site on the merits of the particular case, linked to the matter of local and personal need.
16. The Appellants argue that this self-build home would be used in conjunction with Sandyway to provide care and modern, well-insulated accommodation for vulnerable relatives, in turn avoiding car travel to support them elsewhere and thus reducing harmful global warming emissions.
17. On a further question of whether the appeal site, comprising a garden, is to be regarded as brownfield land preferred for development, the *Dartford*² case, also cited by the Appellants, distinguishes rural gardens as brownfield land, notwithstanding the NPPF excluding urban gardens from that definition. For the purpose of this decision, I therefore treat the site as meeting the definition of brownfield land in terms of the *Dartington* judgment.
18. With respect to the matter of access for detailed consideration, there is no technical highway objection to the design and layout of the driveway, vision splay and on-site parking proposals, as shown on the submitted plans. In terms of its location though, the development would conflict with sustainability principles in generating car travel.
19. Lastly, the development would create a small but material benefit of adding a new dwelling to the district housing stock in the face of the current significant supply shortfall.

Overall Planning Balance and Conclusion

20. I turn now to review the material considerations for and against the development and apply the tilted balance.
21. In favour of allowing the proposed development is the increasing flexibility in the consideration of proposals for new dwellings in or attached to small rural settlements and this must carry some weight.

¹ Braintree DC v SSCLG & Granville Developments

² Dartford BC v SSCLG &ORS

22. Based on the *Dartington* judgment, the rural garden of Sandyway, would be regarded as brownfield land preferred for development making more efficient use of the land. This too weighs in favour of this appeal.
23. The small but material benefit of a new dwelling contributing to the housing stock carries a further degree of planning weight.
24. The stated intentions of the Appellants for the proposed additional dwelling to be linked to Sandyway as accommodation to fulfil current family needs are commendable and there is some merit in their technical evidence of a reduction in car travel and emissions that would follow the avoidance of caring for their relatives elsewhere. This factor is materially in favour of the proposal, as showing a level of identified local and personal need, albeit the home would not be classified as affordable in planning terms. Importantly, however, these personal circumstances are, by their nature, transient. It would not be acceptable planning practice to impose conditions restricting occupancy and requiring removal of a permanent dwelling once this need had expired. Consequently, this level of local and personal need carries very little planning weight.
25. It counts in favour of the Appellants that they are named on the East Devon District Council Self-build Register but, at the same time, there is evidently no recorded shortfall in terms of need for this category of housing supply and, accordingly, I judge this consideration to be neutral in planning terms.
26. The detailed means of access is compliant with technical requirements such that this aspect of the case is also neutral in the planning balance.
27. Although Sandyway and its garden are not isolated in the sense of the *Braintree* judgment, it militates against this appeal that the site is still in a significantly unsustainable location, unserved by public transport or accessible local community facilities. A new home on the appeal site would generate unjustified journeys by private car, contrary to the principles of sustainability.
28. Although there are thus several considerations that are materially supportive of this appeal, I judge them together as carrying only a moderate degree of planning weight. In contrast, I judge the unsustainable location of the site to carry substantial weight against the proposal.
29. Therefore, in terms of the applicable tilted balance of NPPF paragraph 11d, permission should not be granted because the adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF, taken as a whole.
30. Finally, the degree of actual harm that would be caused to the countryside, that I have identified by way of my second main issue above, in my judgement also carries material weight in this instance, adding to the case for dismissal of the appeal.

B J Sims

INSPECTOR