



Appeal Decision

Site visit made on 23 April 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 June 2025

Appeal Ref: APP/U1105/W/24/3357175

The Old Reservoir, Ridgeway Lane, Colyton EX24 6RP

- 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 Lewis Pring against the decision of East Devon District Council.
 - The application Ref is 23/1785/FUL.
 - The development proposed is demolition of existing reservoir tanks and construction of new dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing reservoir tanks and construction of new dwelling house at The Old Reservoir, Ridgeway Lane, Colyton EX24 6RP in accordance with the terms of the application, Ref 23/1785/FUL, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are (i) whether the site is a suitable location for the proposed development having regard to the provisions of local and national policy and the accessibility of services and facilities; and (ii) the effect of the proposal on the character and appearance of the area.

Reasons

Location

3. The appeal site is located off a rural lane about 380m from the edge of Colyton. It is outside its defined built-up area boundary and is therefore classed as being in the countryside for the purposes of the East Devon Local Plan 2016 (LP). Strategy 7 of the LP deals with development in the countryside. Here, the policy, amongst other things, only permits schemes that would accord with a local or neighbourhood plan policy that explicitly permits such development.
4. 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. This policy is consistent with paragraphs 115 and 117 of the National Planning Policy Framework (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.

5. There is no dispute between the main parties that there would be no specific policy support for a proposed dwelling in this location and that there would be conflict with LP Strategy 7.
6. While the appeal site is on previously developed land and not particularly far away from pavement access to a well-served settlement, future occupiers would need to walk or cycle a good distance along a narrow lane, with a sharp edge in places that is neither lit, nor paved. Although not heavily trafficked, this would not be an inviting option for the elderly or those with young children to have to navigate on a regular basis, particularly in the dark or during unfavourable weather conditions. As such, even though car reliance wouldn't necessarily be essential for all trips, priority would not be given to cyclists or pedestrians, which represents a modest degree of harm in this respect.
7. For the reasons given, the appeal site is not in a suitable location for the proposed development having regard to the provisions of local and national policy and the accessibility of services and facilities. Accordingly, there would be conflict with LP Strategy 7 and Policy TC2.

Character and appearance

8. While designated as countryside, the appeal site is positioned along a lane that is not without some scattered development. It comprises a modest parcel of undesignated land that includes a former reservoir building of rundown appearance. This can be seen from the existing open site entrance. There are also limited glimpsed views of it from gaps in the hedge adjoining the lane. This largely subterranean building is set into rising land behind with a backdrop of worked fields and some properties on the skyline. It is barely perceptible from more distant public vantage points.
9. The proposal would replace the building with a dwelling and would be about 1.5m taller than it. There would also be a new single storey garage and exposed retaining wall feature cut into the slope. While these elements of the scheme would marginally increase overall levels of built form, the development would be tucked well into the hillside. Therefore, even though the garage and property rooftop would be visible from the entrance and adjoining lane, views of them would remain similarly glimpsed when compared with the existing layout. Consequently, even though residential in use, the eye would not be drawn to the development as an unusual feature in the landscape.
10. Additionally, notwithstanding representations made by interested parties, the low level, curved roof design of the property with its well-proportioned fenestration detailing would provide a sensitively designed architectural nod to existing built form. Moreover, the garage roof and the rear part of the property would include a flat, grassed surface finish following the rising land behind. Despite the Council's assertions to the contrary, a subterranean appearance would be maintained. This, together with the proposed use of natural stonework, timber cladding, and metal seam roof would result in a well-designed development of a high-quality and locally sympathetic material finish, as promoted in LP Strategy 7 and Policy D1 and chapter 12 of the Framework.
11. I therefore conclude on this main issue that the proposal would not harmfully affect the character and appearance of the area. As such, there would be no conflict with LP Strategy 7 or Policy D1.

Other Considerations

12. My attention has been drawn to various court judgements including *Mansell v Tonbridge & Malling BC* where it was found that a fallback position can be a material planning consideration provided there is a real prospect of a fallback development being implemented. In that context, the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect.
13. In that respect, the Council does not dispute that a previous planning permission for the conversion of the former reservoir to a dwelling from 2014 has commenced. Additionally, it agrees that the appellant would be likely to continue with it were the appeal to be unsuccessful. Notwithstanding this, representations assert that there is no realistic prospect of the fallback conversion scheme due to collapsing tanks that have been sinking into unstable green sand. However, the submitted structural engineer's report shows that the tank base has been removed and that the existing wall could be used for retaining purposes in this scheme, if strengthened. Therefore, in the absence of any compelling evidence to the contrary, there is a real prospect of the fallback. This is a material consideration that can be afforded significant weight.
14. Comparisons have been made between the permitted conversion and the proposal in respect of design and scale. Other than descriptions noting the permission largely maintained a similar appearance to that of the existing layout, I have been provided with very little detailed design information. It is also not known whether permitted development rights to carry out small scale domestic extensions or alterations were previously removed. Be that as it may, I have concluded above that the proposal would result in a similar amount of built form overall and that the design, scale and use of materials would be sympathetic to the character and appearance of the area.
15. Additionally, the works required to convert the building to a dwelling would generate a fresh engineered appearance to an otherwise overgrown site. Even in the absence of a domestic garage, the permitted residential use with its associated comings and goings and domestic paraphernalia would still have an urbanising effect that would alter the character of the area in a similar way to this proposal.
16. Moreover, the appellant has provided evidence to demonstrate that the energy costs to run the appeal proposal would be less than the permitted scheme, and that existing materials would be reused onsite. There would be some moderate carbon benefits to the proposal when compared with the fallback. Overall and for the reasons given, the effect of the proposed development is likely to be very similar to the fallback.
17. The Council has referred to a planning appeal in Whimple¹ where an Inspector found no support under Policy H6 of the LP. There is however no dispute that this policy is not relevant to the appeal. Additionally, that Inspector found harm to the character and appearance of the area, whereas I have concluded otherwise. I give this matter no weight.

Other Matters

¹ APP/U1105/W/23/3326357

18. Aside from the identified main issues above, there are also a number of other matters that have been raised by interested parties, and I have taken them all into account. There are concerns relating to the responsibility of the upkeep of the lane, though the evidence shows that this is part of the public highway. In respect of parking pressures, 2 parking spaces and sufficient turning is shown on the plans, which would be acceptable in this location. The lane with is adjoining banked stream is restricted with limited passing places, though the amount of traffic generated would be relatively low and similar to that already approved. I have paid regard to the effect of the proposed development on nearby trees and their roots, including 2 oaks. However, the submitted tree survey demonstrates that harm to trees could be avoided.
19. Other matters are raised such as: the effects of the proposed development on flooding, drainage infrastructure and ground/hedge stability with particular regard to the lane condition during construction. In that context, there are concerns over construction noise on nearby residents and animals, the potential disruption to the water supply on adjoining land, and the effect on biodiversity with the proximity of the development to what is described as an ancient hedge.
20. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters, particularly given the fallback position. Furthermore, the Council has not identified these matters within its reasons for refusal. It is also of particular note that some of the aforementioned issues would be covered by conditions. In that respect, the Council's technical consultations raised no concerns that could not be overcome. Consequently, these matters do not lead me to a different overall conclusion that the appeal should be allowed.

European Designated Site

21. The appeal site is about 4.5km away from the Beer Quarry and Caves Special Area of Conservation (SAC), within its landscape connectivity zone. This is an area that includes a complex network of Commuting Routes likely to be used by the SAC population of bats. The SAC has been designated for its important population of hibernating greater horseshoe bats (*Rhinolophus ferrumequinum*), lesser horseshoe bats (*Rhinolophus hipposideros*) and Bechstein's bats (*Myotis bechsteinii*). These are its qualifying features.
22. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) requires me as the competent authority in the context of this appeal to undertake a Habitat Regulation Assessment to establish whether there are likely significant effects from the proposal, either alone or in combination with other plans or projects upon the SAC.
23. The conservation objectives for the SAC relate to ensuring that the integrity of the site is maintained or restored as appropriate and ensuring that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features. This is to be achieved by maintaining or restoring the extent and distribution of the habitats of qualifying species and the population and distribution of the qualifying species themselves.
24. Although covering a small area, the evidence shows that there is the potential for any new illumination at the appeal site to cause local disruption to bats flying past

the site if it is allowed to spill beyond its boundary. Therefore, a likely significant effect on the SAC cannot be ruled out. Accordingly, in the event I allow the appeal, I am required to undertake an appropriate assessment in accordance with the Habitats Regulations.

25. The Council, in consultation with Natural England (NE) has produced SAC Habitats Regulations Assessment Guidance. Within this document, it is said that mitigation measures can be secured via conditions. NE as the Statutory Nature Conservation Body has been consulted on this proposal and provided a site-specific response. Along with the Council, it raises no objection and agrees that the suggested conditions are an acceptable form of mitigation.
26. In respect of commuting routes, I am satisfied that the conditions would secure suitable mitigation to protect the integrity of the SAC. They would be reasonably necessary and accord with the tests set out in paragraph 57 of the Framework.
27. For the reasons set out above, and taking account of the mitigation measures proposed, the proposal would not adversely affect the integrity of the SAC. Consequently, it would comply with LP Strategy 47, and Policy Coly1 of the Colyton and Colyford Neighbourhood Plan, which amongst other things, require development to protect and conserve the environment and avoid adverse effects on the integrity of designated biodiversity sites.

Conditions

28. In the interests of clarity, standard conditions requiring the development to be carried out in accordance with the plans and within a time limit have been imposed.
29. Prior to development commencing and in the interests of flood risk, highway safety and the living conditions of nearby residents, I have included conditions requiring a detailed construction management plan, engineering details to ensure a stabilised roadside hedgebank, and a drainage scheme.
30. Details of a planting scheme and external materials are required in the interests of the character and appearance of the area. For the same reason, it is necessary to secure compliance with the tree protection measures and remove certain small scale domestic permitted development rights. In that respect, the removal of rights to build additional storeys is reasonably necessary.
31. In the interest of biodiversity, it is necessary to include compliance conditions relating to lighting design and wildlife hedgerow planting.

Planning Balance and Conclusion

32. I have found that the development would not have a harmful effect on the character appearance of the area. It would however conflict with the development plan in that it is contrary to the housing strategy and accessibility policy within the LP.
33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.

34. In the circumstances of this appeal, there is a reasonable prospect that a conversion could come forward. This means that the principle of residential development at the appeal site can be afforded significant weight in its favour, which would trump the conflict with strategic housing and accessibility policies. Therefore, as I have found that the proposal would not harm the character and appearance of the area and would be similar to the fallback, when considered cumulatively, there are material considerations in this case which indicate a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should succeed.

J Hills

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: E100; P100 Rev A; P200 Rev A; P300 Rev B all dated 26/05/23; and P401 dated 15/04/2023.
3. Prior to commencement of any part of the site the local planning authority shall have received and approved a Construction Management Plan including:
 - (a) the timetable of the works;
 - (b) daily hours of construction;
 - (c) any road closure;
 - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the planning authority in advance;
 - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the county highway for loading or unloading purposes, unless prior written agreement has been given by the local planning authority;
 - (h) hours during which no construction traffic will be present at the site;
 - (i) the means of enclosure of the site during construction works; and
 - (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
 - (k) details of wheel washing facilities and obligations
 - (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
 - (m) Details of the amount and location of construction worker parking.
 - (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.
4. No development shall take place until further details of the engineering solution proposed to ensure the stability of the roadside hedgebank during both the construction phase of development and ongoing thereafter have been submitted to and approved in writing by the local planning authority. Development shall proceed in accordance with details as agreed and shall be retained and maintained thereafter.
5. No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.
6. No development above foundation level shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. 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 to include:
- Details of the retention and supplemental planting to the roadside Hedgebank.
 - Specification (layout, species mix, number and size of plants) for the planting of a native hedge on the southern boundary of the site.
 - Specification details for areas indicated as green roof and sedum Planting.
 - Details of permeable hard surfacing finishes.
- Other than in relation to infill planting to the roadside hedgebank, which shall be carried out prior to first occupation. 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.
8. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site.
9. Development shall proceed in accordance with the details set out in the Tree Protection Plan and Arboricultural Method Statement prepared by Advanced Arboriculture and included within their report letter dated 29.06.23. On completion of the development, the completed site monitoring log shall be signed off by the supervising arboriculturalist and submitted to the local planning authority for approval and final discharge of the condition.
10. Lighting shall be installed strictly in accordance with detailed lighting

design ref P2369.4/JN/R0 and specification from Ecological Lighting Solutions (March 2024). No external or additional lighting should be installed without prior approval of the local planning authority. Prior to occupation a written record from the lighting engineer to confirm that the lighting measures are in accordance with their specification should be provided to the local planning authority to provide certainty the measures have been installed.

11. Works shall proceed strictly in accordance with the Preliminary Ecological Appraisal Rev 1 (JG Ecological Surveys Ltd, February 2024) and proposed site plan P100 Rev A, in particular the ecological mitigation and enhancement measures detailed in Section 5 of the ecology report and the retention and creation of hedgerows in the proposed site plan. Prior to occupation a written record shall be submitted to the local planning authority to include photographs of the installed ecological mitigation, compensation and enhancement measures including those listed in Section 5.2 including three bat tubes, three integrated bird boxes, infill hedge planting, and other measures detailed.
12. 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 works shall be undertaken within the Schedule 2 Part 1 Classes A, AA, B, C, D or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, or for the provision within the curtilage of any building or enclosure, swimming or other pool.