



Appeal Decision

Site visit made on 1 April 2025

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2025

Appeal Ref: APP/Y1138/W/24/3348262

Land and Building at Grid Reference 295521 124997, Road from Bonny Cross to Watchet Cross, Morebath, Devon EX16 9AL

- 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 Manoj Kunhiraman against the decision of Mid Devon District Council.
 - The application Ref is 23/01932/FULL.
 - The development proposed is demolition of existing redundant barn and formation of new studio/holiday let residential dwelling and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant submitted amended plans with the appeal to make alterations to the proposed openings in the appeal building. The *'Procedural Guide – Planning Appeals – England'* advises that if an appeal is made, the appeal process should not be used to evolve a scheme. The *Holborn Studios Ltd*¹ judgement established that there are two tests that must be considered separately, namely a substantive test and a procedural test.
3. The proposed amendment would be significantly different from the scheme considered by the Council and consulted on with third parties. Moreover, the amendment would materially alter the nature of the scheme and potentially prejudice interested parties. As such, the proposed amendment involves a substantial difference, and it would cause procedural unfairness to interested parties were I to accept it. As such, it has not formed part of my assessment of the appeal.
4. A revised National Planning Policy Framework (the Framework) was published on 12 December 2024. Further written comments regarding these changes were submitted by the main parties. This decision is based on the current Framework and has taken account of the further representations made on this.

Main Issue

5. The main issue is whether the appeal site is a suitable location for new residential development having regard to relevant provisions of the development plan.

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

Reasons

6. The appeal site comprises a building and associated land located in Morebath. The building is externally finished in natural stone under a corrugated metal roof. It is located close to the edge of the B3190 and there is an area of hard standing to the front of the building. A public right of way passes to the rear of the building. The site is surrounded by residential properties.
7. Planning permission was granted in 2020 for the conversion of the building to a studio/holiday let². A certificate of lawfulness was subsequently granted in 2023³, which confirmed that the 2020 permission had been lawfully commenced. However, the description of development on the application form confirms that the current use of the building is a redundant barn and when I visited the site, it was not apparent that the building was in residential use. It therefore falls that the existing use of the building is not a dwelling.
8. Morebath is not a designated settlement for the purposes of the development plan. Policy S14 of the Mid Devon Local Plan 2013 – 2033 (LP) states that development outside the settlements will preserve and where possible enhance the character, appearance and biodiversity of the countryside while promoting sustainable diversification of the rural character.
9. Furthermore, Policy S14 limits development in the countryside to agricultural and other appropriate rural uses. It sets out, in part, the type of residential development that is permissible in the countryside. This includes affordable and low-cost housing to meet local needs, gypsy and traveller accommodation, conversion of existing buildings to dwellings, replacement dwellings, essential housing for rural workers and accommodation ancillary to a dwelling.
10. Policy DM10 of the LP states that the construction of replacement dwellings outside defined settlement limits will be permitted where the replacement dwelling's floorspace will be no greater in size than the existing dwelling, taking into account any unspent permitted development rights.
11. In the absence of the existence of a dwelling on the site, there is no dwelling to replace. Moreover, the proposal is not for the conversion of the existing building, but its replacement with a new build dwelling. As a result, the proposal would not find support from Policies S14 or DM10 of the LP. Furthermore, the dwelling would not constitute any of the other acceptable forms of residential development listed under Policy S14.
12. It has been established that the appeal site is located in the countryside and part of the development plan's promotion of sustainable development in rural areas will include ensuring that there is sufficient access to services and facilities that does not involve relying on the use of a private motor vehicle.
13. Apart from a church and a village hall, the services and facilities in Morebath are very limited. As such, the future occupiers of the proposed development would need to travel further afar to settlements where they can access the services and facilities needed for day to day living. Morebath is not situated within an acceptable walking or cycling distance from a settlement that has a sufficient level of services and facilities. Furthermore, I have not been provided with any details of a bus

² Mid Devon District Council application reference 20/00800/FULL

³ Mid Devon District Council application reference 23/01343/CLU

service that stops at Morebath. The proposal would therefore not promote the use of sustainable modes of transport, and it would result in the future occupiers of the development becoming overly reliant on the use of a private motor vehicle.

14. For these reasons, the appeal site is not a suitable location for new residential development having regard to relevant provisions of the development plan. Consequently, the proposal would conflict with Policies S14 and DM10 of the LP, which seek, in part, to promote sustainable development in rural areas and a presumption against development outside of the defined settlement boundaries.

Planning Balance

15. The proposal would result in the provision of an additional housing unit to the district's housing stock and the Framework reaffirms the Government's objective of significantly boosting the supply of homes. However, even though small and medium sized sites can make an important contribution to meeting the housing requirement of an area, one additional unit would not make a noticeable difference to the housing supply situation across the Council's area. It is thus a benefit that attracts limited weight. The proposal would also create jobs during the construction phase and the new occupants would provide support to the economy and the vitality of the community once occupied. These benefits attract minor weight in lieu of the scale of development being considered.
16. Additionally, the appellant asserts that the 2020 planning permission for the conversion of the building to a studio/holiday let constitutes a material fallback position. *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314 confirmed that there should be a 'real prospect' of a fallback development being implemented and that the decision-maker should exercise their planning judgement as to whether that would be the case depending on the particular circumstances.
17. The certificate of lawfulness granted in 2023 confirms that the 2020 permission is extant. The evidence before me indicates that there is every prospect that the building would be converted in accordance with the previously granted planning permission should this appeal fail and a clear intent to develop the site has been demonstrated. The 2020 permission therefore represents a genuine fallback position.
18. The number of trips generated by the material fallback position of the conversion of the building to a one-bedroom studio/holiday let would be comparable to the trips generated by the erection of the proposed one-bedroom dwelling. As such, the appeal scheme and the fallback position would have a similar effect in respect of sustainability considerations for development in rural areas.
19. However, whilst the fallback position would allow the conversion of the building to a studio/holiday let, the appellant has explained that the proposed development would have a steeper roof pitch and a ridge height that would be half a metre higher than the existing building, the large existing openings in the front elevation would be replaced with smaller domestic sized openings, and a larger window would be installed in one of the gables. As such, the proposed development would result in a building that would not have the agricultural appearance of the existing building, which is reflective of a barn located in the countryside.

20. Consequently, the proposed development would be more harmful than the material fallback position that would involve the sympathetic conversion of an existing building. As such, the genuine fallback position does not provide sufficient justification for a proposal that would conflict with the development plan, and the weight I can attribute to the fallback position is therefore lessened to a moderate level.
21. My attention has been drawn to an allowed appeal for a replacement building to provide one dwelling near Winsford in Cheshire⁴. The Inspector concluded that the location of that proposal was not suitable for new residential development, having regard to the accessibility of services and facilities and public transport. However, as there was an extant planning permission for a substantially similar dwelling, the fallback position created by that permission formed a material consideration that outweighed the limited conflict with the Council's locational strategy. Whilst I have not been provided with the plans for that scheme, the Inspector judged that the appeal proposal would have very little difference to the fallback position in terms of the appearance of those two schemes. That appeal therefore materially differs from the appeal before me, where I have found that the scheme would be more harmful in terms of appearance than the fallback position. As such, the Winsford appeal decision does not alter my judgement on the weight to give to the fallback position in this particular instance.
22. Weighing against the benefits of the scheme and the fallback position is the conflict with the development plan. The proposal may comply with certain policies contained in the development plan, but given the harm that I have identified, the proposal would conflict with the development plan when taken as a whole. The Framework seeks to deliver suitable locations for housing development where this can help to meet identified needs in a sustainable way, promote sustainable development in rural areas through the location of housing where it will enhance or maintain the vitality of rural communities and identify and pursue opportunities to promote walking, cycling and public transport use. The development plan policies that I have identified conflict with are consistent with these aims of the Framework. As such, significant weight is attributed to the policy conflict and associated harm identified above.
23. Overall, I find that the adverse impact of the unsuitable location of the site for residential development would outweigh the cumulative moderate weight that can be attributed to the previously identified benefits and the material fallback position.

Conclusion

24. For the reasons given above, the proposed development would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR

⁴ Appeal reference APP/A0665/W/20/3247889