



Appeal Decision

Site visit made on 25 August 2022

by **Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 14 September 2022

Appeal Ref: APP/X1118/W/21/3284991

Trees Farm, Shutscombe Hill, Brayford, Barnstaple, Devon EX32 7QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Coster against the decision of North Devon District Council.
 - The application Ref 72649, dated 14 December 2020, was refused by notice dated 27 April 2021.
 - The development proposed is described as erection of agricultural building (part retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An application for costs was made by Mr Michael Coster against North Devon District Council. This application is the subject of a separate Decision.
3. The scheme is in part retrospective given that the platform on which the proposed building would stand has already been constructed, together with an access. Whilst parts of a building have also been constructed on the platform, the proposed building would differ. These works were undertaken in relation to a 2016 prior approval scheme (the 2016 scheme), which, contrary to the conditions set out within Schedule 2 Part 6 Class A of the Town and Country Planning (General Permitted Development) Order 2015, was not then executed in accordance with the details submitted with the application. Whilst the works undertaken thus far have helped to inform my assessment, I have based my decision on the submitted plans.

Main Issue

4. The main issue is the effect the development has and would have on the character and appearance of the area.

Reasons

Background

5. Amongst other things Policy ST07 of the North Devon and Torrington Local Plan 2011-2031 (the Local Plan) restricts development in the countryside to that which is enabled to meet local economic and social needs. Policy DM14 of the Local Plan further supports small scale rural development which has a strong

function link to local agriculture. Though the proposed development is described as an agricultural building, the context and need for it is disputed.

6. Agricultural need was not questioned when the Council considered the 2016 scheme. An alternative scheme was however refused in 2018 on grounds that there was no operative commercial farm business, and no agricultural activity on site. Citing a 2019 appeal decision relating to a barn at Field 4932 in Brayford, and whose content is dated by subsequent case law, the appellant disputes the validity of the Council's 2018 decision. The validity of the Council's 2018 decision is not however a matter which falls within the scope of the current appeal.
7. It was more recently established at appeal in 2021 that whilst the same appellant previously ran an agricultural business elsewhere, no business was currently established, and no substantive agricultural activity was being undertaken on the land containing the site. Based on my visit, and in the absence of any firm evidence to the contrary, nothing appears to have changed since. Indeed, the claim that animals are currently being kept elsewhere remains unsubstantiated, and though a list of general welfare considerations relating to pigs has been supplied, in the absence of context, this indicates no more than a theoretical need for the proposed building. As the need for the proposed agricultural building has not therefore been demonstrated, the development would not find support in Policy DM14, and both conflicts and would conflict with Policy ST07. In this regard the Council's specific concern is the effect that the development both has and would have on the character and appearance of the area.

Character and appearance

8. The site forms part of a parcel of steeply sloping land containing a mix of grass, trees and scrub. It is located on the west side of the broad valley of the River Bray, forming part of an attractive landscape within which it is exposed to long views. The large platform upon which the proposed building would stand has been constructed towards the upper edge of the parcel. Though views towards it from some directions are screened or filtered by a combination of trees and topography, it is both clearly visible and conspicuous from a large section of the hillside opposite, up which runs a public footpath linking Brayford with High Bray. Within this context the construction and form of the platform appear acutely at odds with the sloping topography of the surrounding land. The proposed building would be similarly exposed, conspicuous and made prominent by its elevated position, size and unusual design, the latter featuring details more typical of a domestic rather than an agricultural building. For all these reasons the development both does and would appear incongruous.
9. The appellant considers that the proposal should be approved on the basis of its apparent similarity to the 2016 scheme. However, whether or not the appellant could have made proper use of permitted development rights to construct a similar building in the past does not alter the fact that he did not, nor does it otherwise bind my assessment in the present. Moreover, the Council found that the building proposed in 2016 would not have been visible from public viewpoints, whereas clear views of the building currently proposed would exist. The circumstances, as too the decision-making context, thus differ.

10. Insofar as further reference has been made to the 2019 appeal decision relating to Field 4932, this has little relevance to my assessment above. Indeed, aside from procedural differences, the site and design clearly differ.
11. For the reasons set out above I conclude that the development would both have and would have an unacceptable effect on the character and appearance of the area. The development therefore both conflicts and would conflict with Policy DM08A which states that development should respect landscape character, and Policies ST04 and DM04 which together seek to secure development whose design responds to the characteristics of a site, its wider context and the surrounding area.

Other Matters

12. The decision notice carries an 'informative' stating that details of landscaping for biodiversity net gain should be provided in the event of an appeal. This would be in order to demonstrate compliance with Policy DM08 of the Local Plan. The informative was not a reason for refusal, but did imply that an absence of such information could otherwise constitute such a reason. Though the Council has drawn attention to this informative at appeal, it has not provided any further detailed comment, and nor has it sought to formally introduce the matter as an additional reason for refusal. For this reason, and given that I have otherwise resolved to dismiss the appeal, no further consideration of this matter is required.

Conclusion

13. For the reasons set out above the effects of the development both are and would be unacceptable, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR



Costs Decision

Site visit made on 25 August 2022

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 September 2022

Appeal Ref: APP/X1118/W/21/3284991

Trees Farm, Shutscombe Hill, Brayford, Barnstaple, Devon EX32 7QE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The appeal is made by Mr Michael Coster for a full award of costs against North Devon District Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for a proposed development described as erection of agricultural building (part retrospective).
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Decision

1. The application for an award of costs is dismissed.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's claim partly relates to the merits of a 2018 application for prior approval, and matters surrounding the Council's handling of that application. In this regard the PPG states that whilst costs applications may relate to events before the appeal was brought, costs that are unrelated to the appeal are ineligible. As the 2018 application is not the subject of the current appeal, the matters raised by the applicant cannot be considered for an award of costs.
4. The applicant asserts that a 2016 prior approval scheme should have provided a basis for the appeal scheme itself to be approved. As set out within my main decision however, the decision-making content and circumstances differ. In this regard the Council's assessment of the application subject of the appeal was necessarily based on circumstances as they currently existed.
5. The applicant states that the Council's identification of a lack of commercial farming of the land was unsubstantiated. However, this was clearly established at appeal in 2021. In this regard the applicant's case itself lacked the evidence necessary to demonstrate that circumstances had changed.
6. The applicant further states that in making its decision the Council 'misapplied' Policy DM08 of the North Devon and Torridge Local Plan 2011-2031, which relates to biodiversity and geodiversity. However, as the terms of Policy DM08 apply to 'all development', it was clearly relevant, notwithstanding the Council's

unusual step of identifying the absence of information necessary to demonstrate compliance within an informative.

7. The applicant asserts that refusal of the scheme was based on 'peer pressure', listing a number of interested parties. Interested parties are however entitled to make representations in relation to planning applications. Whatever role such representations might have played in informing the Council's decision, I am satisfied that the latter was correct, as is reflected in my dismissal of the appeal.
8. For the above reasons I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG, has not been demonstrated.

Conclusion

9. For the reasons outlined above, I conclude that the application for an award of costs should be dismissed.

Benjamin Webb

INSPECTOR