



Appeal Decision

Site visit made on 18 December 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/X1118/W/23/3324407

Riverside House, Newnham Bridge, Road From Newnham Bridge To Fortesque Cross, Umberleigh, Devon EX37 9EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs J Glenister against North Devon District Council.
 - The application Ref 76435, is dated 3 January 2023.
 - The development proposed is demolition of existing workshop building and erection of a detached house with an integral garage, amenity space, car parking, access and landscaping, together with a change of use from two houses to one house by the re-integration of an existing annex dwelling into the main house.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing workshop building and erection of a detached house with an integral garage, amenity space, car parking, access and landscaping, together with a change of use from two houses to one house by the re-integration of an existing annex dwelling into the main house is refused.

Applications for costs

2. An application for costs was made by Mrs J Glenister against North Devon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of development in the banner heading and decision above is taken from the planning application form, albeit with the word 'proposed' omitted as this word does not refer to an act of development.
4. The Government published the revised National Planning Policy Framework on 19 December 2023 (Framework). The main parties have had an opportunity to comment on the significance of the changes, and I have taken any relevant comments into consideration.
5. Since the submission of the planning application, the Council has confirmed it has a five-year housing land supply at present. The appellant has had an opportunity to review this position.

Background and Main Issues

6. This appeal relates to the Council's failure to give notice within the prescribed period of a decision on an application for planning permission. The Council has provided an Application Report which sets out the putative reasons for refusal

and the appellant has had the opportunity to respond to these. I have therefore had regard to the Council's submissions when determining this appeal.

7. Thus, having regard to the above, the main issues are:

- the effect of the proposed development on the character and appearance of the surrounding area; and
- whether the proposed development would provide a suitable location for housing having regard to the provisions of the local settlement strategy.

Reasons

Character and appearance

8. The landscape in the vicinity of the appeal site consists largely of open countryside interspersed with groups of buildings, with residential dwellings and utilitarian structures, and areas of woodland as well as mature planting, including along the roads and railway line.
9. The parties have referred to Policy ST04 of the North Devon and Torridge Local Plan 2011-2031 (adopted October 2018) (LP). This policy requires that development achieves high quality inclusive and sustainable design. It requires that the design is based on a clear process that examines and responds to the characteristics of the site and its wider area. Although the Council's putative reasons for refusal refer to LP Policy DM04, its Application Report also refers to LP Policy DM08A.
10. Policies DM04 and DM08A of the LP together, amongst other things, require that developments are of an appropriate scale, materials and design that respects landscape character and reinforces the key characteristics and special qualities of the area, contributing positively to local distinctiveness. These policies are consistent with Chapter 12 of the Framework which requires high quality design.
11. A prevailing characteristic of this area is its verdant, less developed nature, with a predominately open and spacious character, and a relative lack of buildings. Dwellings within the locality are typically two-storey with rendered elevations under pitched tiled roofs which contribute positively to the character and appearance of the area. Industrial type buildings are also evident, including at Riverside Garage as well as the appeal site, and are typically located with residential buildings.
12. The site is currently occupied by a workshop building. The building is generally concealed from wider views owing largely to the existing mature planting around it and the local topography. However, I observed that the building is visible when passing the site, including from along the A377 highway.
13. The workshop building is a relatively simple, unadorned, metal clad building with a shallow pitched roof. Whilst it is relatively large, due to its simple form, height and muted appearance, it is a somewhat unassuming building and these factors, together with its established nature, goes some way to help the building fit into its setting.
14. Even though the workshop building would be removed and the appeal scheme would have a smaller footprint, the proposed four-bedroom detached house would be taller with steeply pitched roof, would have a substantial retaining

wall, driveways and decking area, giving it a greater appearance of scale. Moreover, it would be positioned slightly further away from the existing buildings and, these matters in combination with its varied palette of materials, large glazed frontage, as well as the elevation composition of the house, the proposal would not harmonise with the simplicity and form of the more traditional local vernacular and materials within the area. Whilst accepting the limited visibility of the site, the workshop building is not as visually prominent as the proposed development would be, and even small design elements can erode the quality of the surroundings.

15. Within the predominately verdant and spacious countryside, these factors would emphasise the proposed dwelling's presence, and result in an unduly visually jarring intrusion of conspicuous built form within its setting. Whilst the design is purposefully contemporary, the proposal would harmfully increase the appearance of scale of building at the site, with an appearance and form that would not respond to the local building vernacular.
16. Whilst indicative landscaping has been shown and additional landscaping could be incorporated, such screening cannot be relied upon, particularly in winter months when foliage is reduced. Nor can its survival in the long term be guaranteed.
17. Notwithstanding the development would reintegrate an existing dwelling into the main house or that the site has a lawful residential use, it would introduce a much more noticeable development, which would harmfully contrast with the character and appearance of the area. Even though a condition could require the submission of alternative materials, no details are before me, and I am not satisfied that this would address the harm I have identified.
18. For the above reasons, in terms of this main issue, I conclude the proposed development would have a significantly harmful effect on the character and appearance of the surrounding area. In this regard, the appeal proposal would be contrary to Policies ST04, DM04 and DM08A of the LP.

Suitability of location

19. The appeal site lies adjacent to the A377 highway and Newnham Bridge, to the north of Kings Nympton Railway Station. Whilst there is some development close to the site, there is no dispute that the site lies in a countryside location, beyond various Local Centres, Villages and Rural Settlements listed under Policy ST07 of the LP.
20. LP Policy ST07 sets out the Council's spatial development strategy for Northern Devon's Rural Area, which is to focus new development on Local Centres which provide a broad range of services and facilities. The policy is therefore directly relevant to this appeal.
21. In the countryside, beyond Local Centres, Villages and Rural Settlements, in accordance with LP Policy ST07, development is limited to that which would meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. Additionally, paragraph 83 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, the proposed open market dwelling would not

meet any of the requirements of LP Policy ST07 and there would be conflict with the settlement strategy.

22. The appellant considers that the proposal would comply with Policy ST02 of the LP, which expects development to make a positive contribution towards the social, economic and environmental sustainability of northern Devon and its communities while minimising its environmental footprint. Whilst the policy expects to achieve this by, amongst other things, redeveloping previously developed land (PDL), LP Policy ST02 also seeks to protect and enhance the area's landscape and to ensure a balanced mix of uses where development takes place in environmentally, socially and economically sustainable locations by reducing the need to travel, especially by car and facilitating a step-change towards the use of sustainable modes of transport including walking, cycling and public transport.
23. Moreover, the Framework encourages the use of PDL and sites that are physically well related to existing settlements where suitable opportunities exist. Chapter 2 of the Framework promotes development which meets the needs of the area through a sustainable pattern of development.
24. Although there is a bus service near to the site, this only operates on Thursdays. Access from the site to the railway station would not be overly attractive to pedestrians or cyclists given the width of the A377 in places, the absence of segregated footpaths and the likely speed of vehicles travelling along the road. A lack of street lighting along the route would make the journey more hazardous at night and during winter months. Consequently, it is most likely that future occupiers would be likely to be largely dependent on private vehicles for access to meet their day-to-day needs.
25. Nevertheless, the appeal scheme involves the integration of an existing dwelling into the main house. As such, although the proposal would be a larger dwelling, there would be no additional residential use on the site. I note that the re-integration of the existing dwelling into the main house could be controlled by condition to ensure there would be no increase in the number of dwelling units on the site.
26. Although the parties dispute the relevance of LP Policy DM26, which relates to replacement dwellings in the countryside, the policy is not determinative in relation to this main issue.
27. Accordingly, even though the location would not accord with the local settlement strategy, the proposal would not result in a net increase in residential use on the site or materially impact on the need to travel by private vehicles.
28. Consequently, weighing the above matters in the balance, and notwithstanding the conflict with Policy ST07 of the LP, I am satisfied that the proposal can be justified in this location as there would be no additional residential units on the site, regardless of whether the appeal is allowed.

Other Matters

29. The evidence refers to a potential alternative option in the form of a conversion of the existing workshop building. To be afforded any weight, there must be a real prospect of a fallback position being implemented, i.e. there must be a greater than theoretical possibility that the fallback would take place. Despite

the submission of a planning application in respect of an application for the conversion of the existing building and a copy of an email from the Council indicating that approval could be given in respect of that application, there is no evidence of planning permission having been granted and no convincing evidence has been provided to indicate the likelihood of the appellant carrying out such works should the appeal not be successful.

30. Furthermore, having noted the submitted details, there is no compelling evidence to demonstrate that a conversion scheme would have a greater prominence than the appeal scheme and lead to greater harm to the character and appearance of the area. As such, this is a matter that carries very limited weight, and the fallback position does not indicate that permission should be granted.
31. I note the appellant's view that the appeal scheme would have a very low/zero carbon footprint, would include renewable energy generation and would incorporate sustainable water management facilities. There would also be opportunity for improvement to the biodiversity of the site. The proposal would improve the highway access into the site and result in a reduction of the number of access points. These are benefits of the proposal, albeit the benefits are limited by the scale of the development and would not outweigh the harm identified.
32. Although the appeal site is PDL and the workshop building could be reused elsewhere, this in itself does not mean that the current scheme is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issues of the case. The workshop building is not as visually prominent as the proposed development would be. As such, its impact on the wider landscape is significantly less harmful than the proposed development.
33. The proposal would make suitable provision for management of surface water and would lie in Flood Zone 1. There would be no harm to neighbouring occupiers living conditions. However, these represent a lack of harm and accordingly, would be neutral in any balance.
34. The reduced footprint of the proposed dwelling, the associated landscaping and the removal of the workshop building are said to help mitigate any adverse effects of the proposal. However, given the workshop building is not as visually prominent as the proposed development would be, this would not outweigh the harm to the character and appearance of the area.
35. The appellant raises concerns over the conduct of the Council in the handling of the application. However, those are procedural matters that do not affect the planning merits of the case, which I have assessed on the basis of the evidence before me.
36. Whilst I note the references to various case law, including that which emphasises that the development plan should be considered as a whole, these cases do not lead me to a different conclusion. I have found the proposal would conflict with a number of policies. I have considered this appeal on its merits, and I do not consider these affect the harmful and permanent effect of the proposed development that I have identified.

Planning Balance

37. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
38. The Council confirms that it can demonstrate a 5-year housing land supply at present and this matter is not disputed by the appellant.
39. On the basis that the proposal would not lead to an increase in the number of residential units on the site, the most important policies for determining this appeal are Policies ST04, DM04 and DM08A of the LP. These are policies that are broadly consistent with the Framework's requirement for decisions to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting.
40. The scheme would offer an improvement to the District's housing stock with a new, modernised low/zero carbon dwelling. There would also be benefits in relation to highway safety with an improved access arrangement to the site. Some biodiversity benefits would be likely to arise. Nevertheless, given the scale of development these benefits attract limited weight.
41. The site is PDL and such land can sometimes provide the basis for redevelopment in the countryside. Moreover, it would not lead to an increase in the number of residential units on the site and would be unlikely to materially impact on the need to travel by private vehicles. However, the proposal would lead to significant harm to the area's character and appearance, resulting in conflict with the development plan as a whole.
42. This harm weighs substantially against the proposal. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm identified above. Consequently, the proposal would conflict with the development plan as a whole and there are no material considerations, including the provisions of the Framework, which justify a decision otherwise than in accordance with the development plan.

Conclusion

43. For the reasons given above I conclude that the appeal should be dismissed.

J White

INSPECTOR



Costs Decision

Site visit made on 18 December 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

**Costs application in relation to Appeal Ref: APP/X1118/W/23/3324407
Riverside House, Newnham Bridge, Road From Newnham Bridge To
Fortesque Cross, Umberleigh, Devon EX37 9EU**

- 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 application is made by Mrs J Glenister for a full award of costs against North Devon District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of existing workshop building and erection of a detached house with an integral garage, amenity space, car parking, access and landscaping, together with a change of use from two houses to one house by the re-integration of an existing annex dwelling into the main house.
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Decision

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

Preliminary Matter

2. The description of development in the banner heading above is taken from the planning application form, albeit with the word 'proposed' omitted as this word does not refer to an act of development.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.
4. The PPG includes examples of unreasonable behaviour by planning authorities that may lead to a substantive award of costs. Amongst other things, this can include, "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
5. The applicant contends that the Council has behaved unreasonably because it has not properly exercised its duty to have regard to the provisions of the development plan, and the development plan as a whole. That the Council did not consider Policy ST02 of the North Devon and Torridge Local Plan 2011-2031 (adopted October 2018) (LP), which supports the redevelopment of previously developed land (PDL), and that the Council had regard to an irrelevant Policy DM26 of the LP. Additionally, that the Council failed to take

into account other material considerations including that the proposal would replace an existing building and provide a low/zero carbon energy design and other landscape and biodiversity improvements.

6. In the appeal, I found that the proposed development would not be in accordance with development plan policies, or the development plan when taken as a whole. I went onto consider material considerations. However, that is very much a matter of planning judgement, balancing harm against benefits to arrive at a final decision.
7. The Council's Application Report (AR) describes the proposed development and is clear. It refers to Policy ST07 of the LP which is a key policy in this case. The parties agree that the appeal scheme would be in conflict with LP Policy ST07. The Council's AR made an assessment of the weight that should be attached to the fallback position. The Council was entitled to form its view that the fallback position attracts little if any weight and it was not unreasonable of the Council to conclude as it did.
8. The description of development includes the re-integration of a dwelling into the main house. Consequently, the appeal scheme would not result in a net increase in dwellings at the appeal site. As such, it was not unreasonable of the Council to have regard to Policy DM26 of the LP. Moreover, the planning statement submitted with the application makes reference to this policy.
9. The AR sets out the concerns including regarding the siting and scale of the proposed dwelling and includes imagery comparing the existing building and the appeal scheme.
10. Whilst the Council does not refer to Policy ST02 of the LP, it maintains that its concerns related to the conflict with Policy ST07, as well as the character and appearance of the area, would not have been outweighed. There is a need to consider whether the scheme complied with the development plan as a whole, rather than against any individual policy. Therefore, even though I have found differently to the Council with regard to the suitability of the location in the appeal decision, the evidence indicates that the Council would have refused planning permission regardless of this.
11. The Council substantiated its reasons as to why it would have refused planning permission and, therefore, did not prevent or delay development which should clearly have been permitted. It will be seen from my appeal decision that I found harm in respect of some of those issues and conflict with the development plan taken as a whole. In such circumstances where the applicant decided to pursue the appeal against the non-determination of the application to its end, with the Council's essential arguments against the development prevailing, the costs of an appeal cannot be considered an unnecessary or wasted expense. An appeal would have been required in any case and so this has not resulted in any unnecessary expense on the part of the appellant.
12. Overall, the Council's decision and reasoning is not so inadequate or irrational as to amount to unreasonable behaviour. The Council clearly substantiated its case with specific reference to the proposed development. I am satisfied that the Council adequately set out its position. Even if the Council had made its decision earlier it would have not prevented the need for the appeal.

Conclusion

13. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG has not been demonstrated and that, therefore, an award of costs is not justified.

J White

INSPECTOR