

Committee Report – 14 April 2022

Application Number: 1/0081/2022/FUL

Registration date: 27 January 2022

Expiry date: 24 March 2022

Applicant: Mr And Mrs Mark And Lorraine Brumham

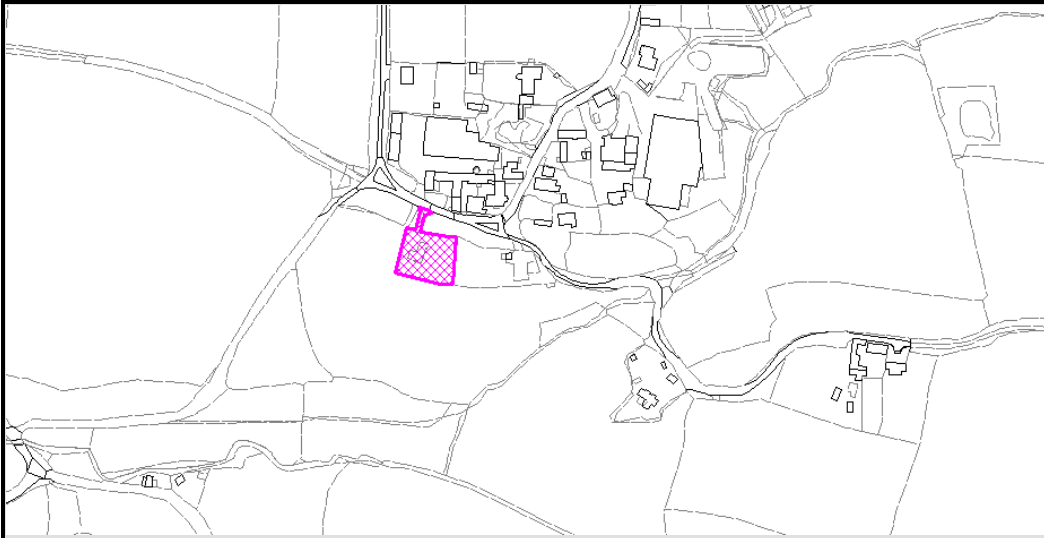
Agent: Metters & Wellby

Case Officer: James Jackson

Site Address: Land At Great Philham Farm,
Hartland,
Devon,

Proposal: Removal of abandoned, partially constructed building and replace with no.1 residential dwelling

Recommendation: Refuse



Reason for referral:

Councillor Dart has called the application to Plans Committee if the officer is minded to recommend that the application be refused, for the following reasons:

1. This site is in desperate need of attention as what is existing, is an eyesore.
2. We currently have a shortage of housing stock, no 5 year housing land supply and this site is already half developed, (owing to the fact that historically there was a permission granted) albeit that it has now lapsed.

Relevant History:

Application No.	Description	Status	Closed
1/0150/1993	Agricultural dwelling (outline)	PER	22.03.1993
1/0706/1993	Erection of an agricultural dwelling (reserved matters)	PER	20.07.1993
1/2312/2002	Retention of partly constructed agricultural dwelling	REF	24.02.2004
1/0261/2014/FUL	Completion of partially built dwelling for use as Holiday let (amended description)	REF	09.05.2014
1/1213/2021/FUL	Erection of dwelling in place of partially constructed building, and associated works	WDN	21.12.2021

Site Description & Proposal

Site Description

The application relates to a parcel of land within the countryside, to the south of the collection of agricultural buildings and dwellings which together form the hamlet of Philham.

The site is accessed across a wide grassed verge that separates the site from the public highway to the north. It slopes gently downwards towards its southern edge, before the land drops away more steeply beyond the site into the valley to the south. The four site boundaries are formed from hedgebanks and mature trees.

An existing structure is located on the site, which it is understood relates to a previously lapsed planning permission. The structure comprises the floor slab and blockwork walls built to first floor level. There is also some evidence on site of services that have previously been installed.

The site is located approximately 1.5kms to the south of Hartland.

Proposed Development

The application seeks full planning permission for the erection of one dwelling.

The existing structure on the site would be removed. In its place would be constructed a two storey dwelling with walls constructed from natural stone with decorative quoins, beneath a roof covering of natural slate. Fenestration would be formed from light oak coloured UPVC.

The dwelling would accommodate three bedrooms, all with en suite facilities; kitchen / diner; studio; utility room; living room; office and dressing room.

A parking and turning area would be provided within the northern part of the site and a driveway would be constructed to provide access between the site and the public highway to the north.

Foul drainage is proposed to be managed by a package treatment plant, with surface water to be drained to a soakaway.

Consultee representations:

Hartland Parish/Town Council:

Hartland Parish Council has reviewed planning application 1/0081/2022/FUL. Concerns were raised with regards to the building, which far exceeds the original footprint.

Devon County Council (Highways):

Standing Advice

Environmental Protection Officer:

In relation to the above application, the Environmental Protection Team comments are outlined below.

Residential Amenity

The application site is located opposite a farmstead containing agricultural buildings such that there is the potential for an adverse amenity impact on the residential amenity of the proposed dwelling. However, having regard for the separation distance and screening between the application site and farmstead, in particular the large agricultural buildings, any potential adverse impact is negated.

Due to the existence of neighbouring dwellings in close proximity, there is the potential for detriment to residential amenity from the construction works associated with the proposed development if control measures are not in place. Should planning consent be granted, the Environmental Protection Team recommends a condition restricting construction works and delivery times to 0700 to 1900 hours Monday to Friday and 0800 to 1300 hours on Saturdays only with no works permitted on Sundays and Bank Holidays in order to protect residential amenity.

Land Quality

There appears to be no detailed information provided on the historic use and subsequent land quality of the application site. Agricultural use and activity can result in ground contamination and ground conditions that are potentially harmful to human health or unsuitable for occupation without remediation. Given the sensitive end use, it is essential that the application site is appropriately assessed for any potential contamination that may impact future occupants and, where identified, remediated accordingly. Should planning consent be granted, the Environmental Protection Team recommends the imposition of the Authority's full standard contaminated land condition.

Foul Drainage

It is noted that the proposed dwelling is to be served by a new treatment plant discharging to a drainage field. The percolation test results provided show a significant variation in one of the test holes and subsequently, percolation testing should be retaken as per guidance.

AONB Team:

No response.

Representations:

Number of neighbours consulted: 2
Number of representations received: 1
Number of objection letters: 0

Number of letters of support: 0
Number of neutral representations: 1

One neutral representation has been received, which does not object to the proposed dwelling but raises concerns in relation to the impact of the proposal on the water supply within the hamlet.

Policy Context:

North Devon and Torrington Local Plan 2011-2031:

ST06 (Spatial Development Strategy for Northern Devon's Strategic and Main Centres); ST07 (Spatial Development Strategy for Northern Devon's Rural Area); ST21 (Managing the Delivery of Housing); ST04 (Improving the Quality of Development); DM04 (Design Principles); DM08A (Landscape and Seascape Character); DM01 (Amenity Considerations); DM08 (Biodiversity and Geodiversity); ST14 (Enhancing Environmental Assets); ST10 (Transport Strategy); DM05 (Highways); DM06 (Parking Provision); DM02 (Environmental Protection);

Government Guidance:

NPPF (National Planning Policy Framework); NPPG (National Planning Practice Guidance); NERC (Natural Environment & Rural Communities); WACA (Wildlife & Countryside Act 1981);

Planning Considerations

The main considerations with this application are:

- Principle of Development
- Character and Appearance
- Residential Amenity
- Biodiversity
- Highways
- Foul and Surface Water Drainage
- Tilted Balance and Conclusion

1. Principle of Development

Paragraph 2 of the National Planning Policy Framework (NPPF) states that planning law (namely Section 38(6) of the Planning & Compulsory Purchase Act 2004 and Section 70(2) of the Town & Country Planning Act 1990) requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.

The site is located within the countryside in planning terms, by reason that it is located outside of any defined development boundary and is not located within a Rural Settlement. Policy ST07 of the NDTLP sets out the spatial development strategy for northern Devon's rural area, and clarifies that in the countryside, beyond Local Centres, Villages and Rural Settlements, development will be limited to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a Countryside location. Similarly, the site is not located one of the defined settlements listed at Policy ST06 of the NDTLP. It is clear that open market residential development would not meet these policy requirements and that the principle of residential development in this location is not supported by the NDTLP.

It is noted that a partially constructed dwelling is present on the site, which relates to an agriculturally tied dwelling that was previously permitted under outline permission 1/0150/1993 and reserved matters approval 1/0706/1993. It is understood that the development was commenced after the permission had lapsed. As such, the previous permission and partially constructed dwelling do not establish the principle of residential use at the site. Section 171B(1) of the Town and Country Planning Act 1990 states the following in relation to time limits for enforcement of breaches of planning control:

Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

It is clear that the building operations comprising the construction of the dwelling have not been substantially completed. Consequently, the works undertaken on site remain unlawful.

Notwithstanding the above policy conflict, as a result of the Burwood Appeal (APP/W1145/W/19/3238460), the Council accepts that it cannot currently demonstrate a five year supply of deliverable housing sites (5YHLS); with the appeal concluding that there is a supply of 4.23 years across Northern Devon. By virtue of not being able to demonstrate a 5YHLS, there is a need to apply the presumption in favour of sustainable development (the 'Presumption') (paragraph 11(d), NPPF) as a material consideration in determining planning applications for housing.

Paragraph 11 (d) notes:

Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, Local Planning Authorities should grant planning permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance (National Parks, AONB, SSSI, Heritage Assets, Habitat Sites) provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

For the purposes of the Presumption, policies of the development plan are not considered to be automatically out of date by virtue of not being able to demonstrate a 5YHLS. Whether a policy of the development plan is out of date is a matter for the decision taker, in light of their substance and considering their conformity with the NPPF. As the NDTLP was adopted relatively recently, none of the policies are generally considered to be out of date for the application of the Presumption.

The Presumption is set out in two parts by Paragraph 11 (d) of the NPPF. It is noted that the site is located with the AONB (a protected area), however for the reasons set out later in this report this alone does not provide a clear reason for refusing the application. Consequently, as this proposal does not harm a 'protected area', the decision taker in this case only needs to consider the NPPF's requirement to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits; the so-called tilted balance (Paragraph 11(d)(i), NPPF).

In addition to the 'tilted balance', some weight can be given to policy ST21 of the NDTLP which relates to managing the delivery of housing. In particular, ST21(2) is relevant, which supports development outside of settlement limits (where completions are below 90% of the annual

requirement). The Burwood Appeal decision determined that ST21(2) is currently engaged, which requires any proposal to be in a location, of a scale, and nature commensurate with the deficit in required housing (criterion a), demonstrate the ability to contribute in a timely manner to addressing the deficit in housing supply (criterion b), be broadly consistent with the plan's spatial strategy/vision along with the relevant settlement vision and development strategy (criterion c), and be compliant with the remaining plan where relevant (criterion d). Dealing with each of these points in turn:

- (a) The deficit of housing within Northern Devon is clearly substantial as a 5YHLS supply cannot be proven. The proposal for 1 dwelling is modest in scale, however, combined with other development, can assist in the contribution towards a 5YHLS. The proposal is considered to accord with (a).
- (b) The application is a full application, with all details provided. Any pre-commencement conditions would need to be discharged, prior to commencement on site. Once on site, the development could be built out relatively quickly, given the modest scale of the development proposed. The proposal is considered to accord with (b).
- (c) As discussed earlier, the site is located within the countryside. The provision of open market residential development in this location would be contrary to the aims of the NDTLP's spatial development strategy for northern Devon's rural area, which seeks to guide such development towards established settlements with development boundaries that can offer some or all of the services and facilities required to support a residential use. This principle is established by Policies ST06 and ST07 which adopt a hierarchical approach in recognition of the scale of each settlement and the availability of the facilities and services that are available therein, noting that Local Centres will be the primary focus for development within the rural area, with villages also identified to accommodate more modest levels of open market residential development in accordance with local spatial strategies.

It is noted that the site is located approximately 1.5kms to the south of Hartland, which is designated as a Local Centre by Policy ST07 of the NDTLP and contains some of the facilities and services necessary to support a residential use. However, the route between the site and Hartland is characterised by narrow rural roads without street lighting or footpaths and with only limited passing places. There is no bus service that passes the site. Consequently, it is likely that all journeys to access recreation facilities, schools, employment opportunities, health facilities, retail opportunities, social visits, etc. would all need to be made by private motor vehicles, with the result that the site is considered to be an unsustainable location.

For the reasons set out above, it is considered that the proposal would be prejudicial to the plan's overall spatial vision and strategy for northern Devon. The proposal would be contrary to a key aim of the NDTLP; this being to guide residential development towards sustainable locations. This would also be contrary to the aims of the NPPF.

Taking account of the above, it is considered that the proposal is contrary to criterion (c).

- (d) The following sections of this report assess the proposal in the context of the other relevant NDTLP policies.

Taking account of the above, it is considered that the proposal is contrary to Policies ST07 and part (c) of ST21. The following sections of this report provide an assessment of the other material considerations pursuant to the application, followed by the planning balance to weigh the factors in support of and against the granting of planning permission, which will enable a conclusion to be made

in relation to The Presumption and the tilted balance, in accordance with paragraph 11(d) of the NPPF.

2. Character and Appearance

Policies ST04 and DM04 of the NDTLP both have a strong design focus and establish the need for development to be appropriate in, and have respect for, its context and setting.

In this instance the site is located within the designated AONB. It is noted that no comments have been received from the AONB Team. Policy DM08A requires development to respect landscape character of both designated and undesignated landscapes and seascapes, whilst Policy ST14 seeks to protect the special character and qualities of the designated AONB.

Whilst it is accepted that the existing works that have been undertaken on the site detract from the character and appearance of the site and immediate locality, it is your officer's view that their removal should be given no weight in the consideration of the proposed dwelling. This is because, as set out earlier, the building operations have not been substantially completed and therefore remain unlawful.

A residential development of the two storey dwelling proposed would result in a change to the character and appearance of the site. The site does not relate well to the existing built form that forms the hamlet, which is predominantly contained to the northern side of Philham Lane. The submitted Design and Access Statement identifies four viewpoints to the south of the site, across the valley, from which the site would be visible. It is clear that from these viewpoints the site would be seen at a distance and as part of a grouping of other built form that comprises the hamlet. Nonetheless, when viewed from within closer proximity, Philham Lane provides a clear demarcation between the built form to the north and the undeveloped valley to the south. In this context, it is your officer's view that the dwelling proposed would appear as an incongruous addition within the streetscene and would be harmful to the bucolic character and appearance of the open countryside and special qualities of the AONB to the south of Philham Lane.

Taking account of the above, it is considered that the proposal conflicts with policies ST04, DM04, DM08A and ST14.

3. Residential Amenity

Policy DM01 of the NDTLP confirms that development will be supported where it would not significantly harm the amenities of neighbouring occupiers or uses, or result in harm to the future occupiers of the development from existing or allocated uses. Part (i) of Policy DM04 also includes a similar policy direction.

No surrounding dwellings would be overlooked by the proposed development and no other harm would result. It is noted that no objections have been received.

One neutral representation has been received that raises concerns in relation to the water supply within the hamlet. Whilst it is agreed that an adverse impact on water supply is a material consideration, no evidence has been provided to demonstrate that the existing situation would be made worse by the proposal.

The Council's Environmental Protection Officer has suggested conditions in relation to working hours and contamination, which would assist in mitigating adverse impacts.

The proposal is considered to accord with Policy DM01.

4. Biodiversity

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2010 (Habitats Regulations 2010). This is also supported by Policy DM08 of the NDTLP. Policy ST14 of the NDTLP seeks to deliver biodiversity net gain where possible.

The application is accompanied by a Bat & Nesting Bird Survey dated October 2021 prepared by Penpont Ecology Services Ltd. The survey did not find any evidence of bats and one bird's nest was identified. Notwithstanding, the report advises that as a precautionary measure the blockwork structure should be dismantled carefully by hand. If bats are found, works should cease and advice sought from an experienced Ecologist. In addition, to protect nesting birds the structure should be removed from the site outside of the bird nesting season.

In relation to enhancement, the report advises that at least one bird nest box should be installed on the site.

Taking account of the above, it is considered that the biodiversity value of the site should not act as a barrier to the proposed residential use. The proposal accords with policies DM08 and ST14.

5. Highways

Policies ST10 and DM05 of the NDTLP seek, inter alia, to ensure that development does not adversely affect the local or strategic highway network and that vehicular accesses are safe and well designed. In addition, DM06 of the NDTLP seeks to ensure that appropriate parking provision is delivered as part of development. ST10 and DM06 also seek to encourage the use of sustainable modes of transport and reduce reliance on the use of private motor vehicles.

The highways authority has been consulted and has referred to standing advice.

Appropriate parking and turning facilities are provided on site and visibility at the junction of the site with the public highway is good.

As discussed above, the site is in a location remote from the services and facilities needed to support a residential use and is not served by any public transport options. Consequently, almost all journeys to and from the site will likely be made using private motor vehicles. This would be contrary to policies ST10 and DM06 of the NDTLP which aim to reduce the use of private motor vehicles.

Taking account of the above, it is concluded that the proposal accords with policy DM05; however, there is conflict with policies ST10 and DM06.

6. Foul and Surface Water Drainage

Policy DM02 of the NDTLP requires that development must not result in unacceptable impacts in relation to the pollution of surface or ground water, whilst Policy DM04 establishes that water management must be addressed by development.

It is proposed that foul water would be discharged to a package treatment plant and drainage field. The Environmental Protection Officer has commented that the percolation test results provided show a significant variation in one of the test holes and subsequently, percolation testing should be retaken as per guidance. Consequently, at this stage there is no indication that satisfactory foul drainage can be provided.

Surface water would be discharged to a soakaway, which is acceptable in principle.

Taking account of the above, it is considered that the proposal conflicts with Policy DM02.

7. Tilted Balance and Conclusion

As discussed earlier, the site is located within the countryside, outside of any defined development boundary. The principle of residential development in this location is not supported by the NDTLP. However, as discussed earlier it is necessary to undertake a 'tilted balance' assessment as the Local Planning Authority cannot currently demonstrate a 5YHLS.

The development plan policies referred to above are in broad conformity with the NPPF and therefore are not considered to be out of date. In particular, the overarching policy direction of the NDTLP to guide open market residential development towards settlements that offer a broad range of the services and facilities required to support a residential use is also evident in the NPPF and is a key strand of environmental sustainability.

In terms of the matters that weigh in favour of the proposal; the single dwelling proposed would make a contribution, albeit modest, to the housing stock within the district at a time that the Local Planning Authority cannot demonstrate a 5YHLS. The provision of only a single dwelling can only be afforded modest weight in relation to its contribution to the housing stock with the district. There would also be a modest benefit to a small scale developer and other tradespersons resulting from the construction period, as well as a further modest benefit from the payment of council tax. Biodiversity net gain at the site would also be a modest benefit.

As discussed earlier, it is your officer's view that the removal of the existing works should not be given any weight in the committee's consideration of the proposed dwelling. This is because the works undertaken are not substantially complete, and therefore remain unlawful.

Weighing against the application, the proposed development would be located in the countryside, remote from the services and facilities such as schools; health facilities; employment and retail opportunities; and leisure facilities that are necessary to support a residential use. Given the unsuitability of the local road network for pedestrians and lack of public transport options available, almost all journeys to and from the site will likely be made using private motor vehicles. In addition, the proposed dwelling would appear as an incongruous addition when seen at close proximity and would be harmful to the character and appearance of the AONB to the south of Philham Lane.

In respect of the overall balancing exercise, whilst the positive aspects of the proposal are noted, it is considered that the site's location remote from facilities and services, and the consequent need to access such facilities and services by private motor vehicle, is prejudicial to one of the central aims of the NDTLP; to guide open market residential development towards sustainable locations that offer a range of services and facilities to meet the needs of the future occupiers of the development. As a consequence, the proposal is also considered to conflict with environmental sustainability aims, which are also a key pillar of the NPPF. Added to this is the resultant harm to the character and appearance of the area. In addition, it has not been demonstrated that the dwelling could be appropriately served by foul drainage provision. On this basis, it is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

8. Recommendation

Taking account of all of the above, it is recommended that planning permission be refused.

Consideration has been given to the Human Rights Act 1998.

Recommendation

REFUSE for the following reasons:

- 1 The proposed dwelling, by reason of its location in the countryside remote from the day to day services and facilities needed to support an open market residential use and lack of access to sustainable transport options, would likely result in the reliance on private motor vehicles to access essential services and facilities. This would prejudice the spatial development strategy for northern Devon's rural area and would be contrary to the aim of reducing unsustainable travel behaviour and private motor vehicle use. The proposal is therefore contrary to policies ST07, ST21(c), ST10 and DM06 of the North Devon and Torridge Local Plan 2011-2031 and the guidance set out within the National Planning Policy Framework.

- 2 The proposed dwelling, by virtue of its siting to the south of Philham Lane, physically divorced from the majority of built form that comprises the hamlet of Philham, would relate poorly to the existing built form and would appear as an incongruous addition within the streetscene and would detract from the undeveloped character and appearance of the designated AONB to the south of Philham Lane. The proposal is therefore contrary to policies ST04, DM04, DM08A and ST14 of the North Devon and Torridge Local Plan 2011-2031 and the guidance set out within the National Planning Policy Framework.

- 3 The application fails to demonstrate that acceptable foul drainage provision can be provided to serve the dwelling proposed. As such the proposal is contrary to Policy DM02 of the North Devon and Torridge Local Plan 2011-2031.

Plans Schedule

Reference	Received
2021-34.P1	24.01.2022
2021-34.P2	24.01.2022
2021-34.P3	24.01.2022

Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) in dealing with this application, the Council has worked with the applicant in the following and positive and proactive manner. We have made available detailed advice in the form of our statutory policies in the Development Plan, Supplementary Planning Documents, Planning Briefs and other informal written guidance, as well as offering a full pre-application advice service, in order to ensure that the applicant has been given every opportunity to submit an application which is likely to be considered favourably. In such ways the Council has demonstrated a positive and proactive manner in seeking solution to problems arising in relation to the planning application.

In this instance the applicant did not enter into pre-application discussions with the Council.