

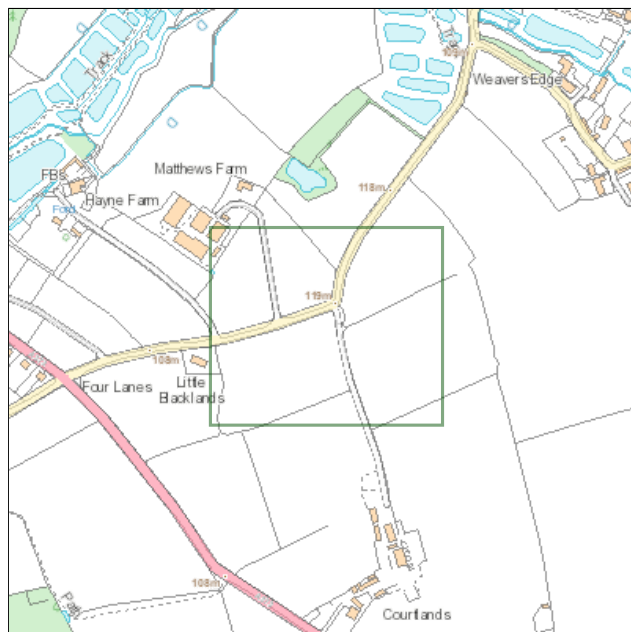
Ward Tale Vale

Reference 20/1801/FUL

Applicant Mrs A Golding

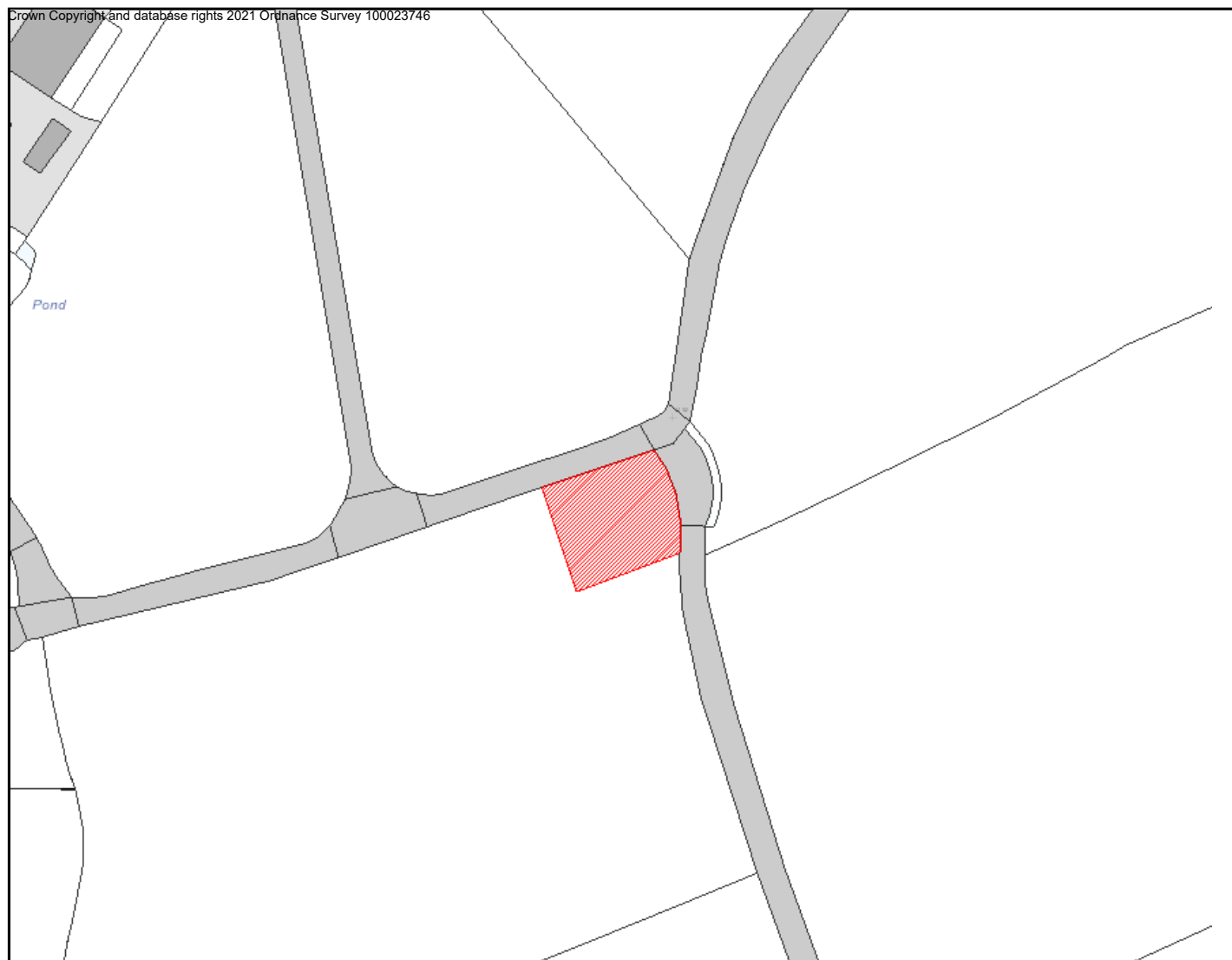
Location Edenvale Turf Courtlands Dulford Cullompton
EX15 2EQ

Proposal Proposed replacement dwelling.



RECOMMENDATION: Refusal

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		Committee Date: 17th March 2021
Tale Vale (Broadhembury)	20/1801/FUL	Target Date: 19.10.2020
Applicant:	Mrs A Golding	
Location:	Edenvale Turf Courtlands	
Proposal:	Proposed replacement dwelling.	

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

This application is brought before Committee as the officer recommendation is contrary to the view of the ward member.

The proposal involves the construction of a two storey three bedroom dwelling within a corner of an open field that forms part of the holding at the Edenvale Turf farm - operated by the applicant's family - at Courtlands, Dulford.

The intended site for the dwelling is around 250-350 metres to the north of the main complex of farm buildings at Courtlands immediately adjacent to the commercial entrance to the farm.

The dwelling is not being expressly proposed as a rural worker's dwelling under the provisions of paragraph 79 of the National Planning Policy Framework or Policy H4 of the adopted Local Plan, although, should Members be minded to view the proposal favourably, the applicant would be willing to accept an agricultural occupancy restriction being placed upon the accommodation by condition.

The development is being justified more strongly on the basis of it amounting to a replacement dwelling (and therefore to be considered having regard to the provisions of Local Plan Policy H6) for one of three approved (but yet to be commenced) residential conversions of farm buildings at Courtlands granted prior approval, under the relevant provisions of the Town and Country Planning (General Permitted Development) Order, in July 2019 (under ref. 19/0267/PDQ). This approval remains extant until July 2022.

As such, and in order to ensure that part of this approval could not be implemented in addition to the construction of the proposed dwelling, were it to be approved, thereby resulting in a net addition of one dwelling in the open countryside, the applicant has offered a draft unilateral undertaking (under

section 106 of the Town and Country Planning Act) setting out obligations to forego the approved conversion in place of this proposal.

The acceptance of the fundamental principle of substituting the conversion for a new build dwelling has been accepted in case law (Mansell) and the applicant draws upon this in support of the principle of the development.

However, it is considered that the proposal fails to meet the criteria set out in Policy H6 insofar as it would not be located on or adjacent to the footprint of the 'existing' dwelling, or elsewhere within the curtilage of the building where a clear planning or environmental benefit would be achieved and, more critically, would be positioned where it would appear unduly visually prominent in the surrounding landscape and detract from its character and appearance.

Whilst not being actively promoted on the basis of a rural worker's dwelling, the application seeks to justify the proposed siting on the basis of the security that it would provide for the farm at its 'business' entrance and the opportunity that it would facilitate for the provision of a 'succession' dwelling for the applicant to enable her to progress the management of the farm that she has begun during the past year.

It is therefore thought that engaging the Policy H4 criteria is unavoidable. Indeed, the preamble in the Local Plan is clear in stating that succession housing on farms should meet these criteria.

However, the plan is also clear in stating that security concerns will not, on their own, be sufficient to justify a new dwelling. As such, and in the absence of any other evidence that the development would meet a proven and essential functional need for a further dwelling on the farm, it is not considered that they can be given significant weight to offset the identified harm to the countryside that would arise as a result of the development.

Indeed, in any event, even if there were acceptance of an essential need for a dwelling on the farm more generally, one of the other key criteria set out in Policy H4 requires that no other buildings suitable for conversion to meet it are available. In this case, not only are buildings available for conversion but approval is in place for their conversion.

Drawing these various matters together, it is considered that the proposal represents the introduction of a dwelling within a visually prominent location in the open countryside that would, in the absence of sufficient justification, result in material harm to the character and appearance of the landscape. As such, it would be contrary to the provisions of Strategies 7 and 46 and Policies D1, H4 and H6 of the Local Plan and guidance set out in the National Planning Policy Framework that seeks to protect the open countryside and is recommended for refusal.

CONSULTATIONS

Local Consultations

Parish/Town Council
Support

Tale Vale - Cllr Philip Skinner

My primary position is dealing with people and business.

I think I would be correct in saying that we have policy in place to support agricultural succession rights regarding such applications and indeed if ever there was a time for policy to over-arch the bigger picture with family succession then here it is.....real and live here today.

Alice Golding is the daughter of Steve and Melanie Light whom own this turf business which started from nothing to one of the most successful turf businesses in our region supplying from large scale developers to the man in the street who want to turf out their back garden.

One of the main drivers for many businesses is knowing your children are keen and following in your footsteps and Alice is achieving this with an aplomb.

I know this family and this area very well, being the ward member here for over 21 years and it is issues and circumstances such as these that are as important as our policies, that, quite rightly are there to protect the countryside from the wrong type of development or even 'the quick buck brigade' which I would want our policies to protect.

Our job as ward members is to understand that and balance that against a back drop of the right development in the right place for the right reasons and how I see it, is us as elected members to engage in the process to draw out the proper developments in the right place at the right time.

Can we really expect our policies to always get the correct outcomes....of course not, that's our job to fight for them for the right reasons.

I hope our officers will give a balanced view and remember that there is quite a bit to be gained from this proposal being supported.

- 1/ A farming succession practice allowing this young family to stay on the farm unit.
- 2/ A sustainable development, what I mean by that is the applicant can walk to work....no need for any public highway usage for work purposes. (Carbon Neutral)
- 3/ Security. The machinery and equipment is of high value and the very existence of a dwelling at this point of entry would surely deter any unwelcome visitors.
- 4/ The removal of a pdq unit for a dwelling in a more suitable location.
- 5/ My final and really biggest point that is not lost on me, is the family unit all staying together and looking out for one another as the years drift by....this fundamental underlying point cannot be put in to any policy but it mustn't go unrecognised in how development planning is so much more than 'just a house' particularly with our

dependence on the NHS when families can look after each other.....this can't be achieved by all, that I recognise, but it can be

That said, I think it is clear that this application has my full SUPPORT as ward member and were the officers report differ from my view I would ask that it goes to the planning committee for decision.

Technical Consultations

None.

Other Representations

No representations have been received from any interested third parties.

PLANNING HISTORY

Reference	Description	Decision	Date
19/0967/PDQ	Prior approval for proposed change of use of 3no. agricultural buildings each to form 1 no. dwelling (use class C3) and associated operational development.	PDQB Prior Approval granted	26.07.2019

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 27 (Development at the Small Towns and Larger Villages)

Strategy 43 (Open Space Standards)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

D2 (Landscape Requirements)

EN5 (Wildlife Habitats and Features)

EN14 (Control of Pollution)

EN19 (Adequacy of Foul Sewers and Adequacy of Sewage Treatment System)

EN22 (Surface Run-Off Implications of New Development)

H4 (Dwellings for Persons Employed in Rural Businesses)

H6 (Replacement of Existing Dwellings in the Countryside)

TC2 (Accessibility of New Development)

TC7 (Adequacy of Road Network and Site Access)

TC9 (Parking Provision in New Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2019)

Site Location and Description

Courtlands is a residential property that, together with an adjacent complex of farm buildings, forms the base for Edenvale Turf, a long established farming business, now principally involved with the growing and selling of turf and the provision of landscaping services, that has been run by the applicant's family since the 1950s.

The complex is located off the A373 approximately 750 metres to the south east of Dulford and is served by two access driveways. One, directly off the A373, principally serves the main dwelling while a second 'business' entrance to the north of the complex is off a Class C lane that extends eastward from the A373 at Four Lanes Cross and leads to Kerswell. The entrance to this driveway is positioned on the corner of a sharp, almost right-angled bend in the road carriageway. A public footpath (no. 13) leading to Kerswell extends to the east of the site.

The application site itself comprises a portion of land of an area of approximately 0.06 hectares in area within the north eastern corner of a field to the south west of the junction of the driveway with the highway; i.e. adjacent to the 'business' entrance. It is located around 260 metres to the north of the nearest building within the farm complex and approximately 380 metres north of the main farm dwelling (Courtlands).

Neither the site nor the surrounding area are the subject of any landscape designations or other material constraints. The nearest part of the boundary of the Blackdown Hills Area of Outstanding Natural Beauty is around 1.3 km. to the east.

Prior approval was granted in July 2019 (ref. 19/0967/PDQ) for the change of use, and associated operational development, of three of the agricultural buildings that sit within the main farm complex to form 3no residential dwellings under the provisions of Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order (GPDO). This approval will remain extant until July 2022.

Proposed Development

The application proposal relates to the construction of a three bedroom dwelling with attached single garage on the site together with the laying out of a driveway/parking area accessed off the farm road just inside the entrance off the highway.

The submitted details show, to all intents and purposes, a two storey built form with the addition of a projecting single storey element - intended to house a living/dining room - on its rear (south west) elevation and the single storey garage element attached to its north west side. However, part of the proposed first floor accommodation would be housed within the roof space with the design incorporating windows at that level, in both the principal (north east) and rear elevations, breaking the eaves line. A bathroom and en suite would be served by roof lights with the remaining rooms and a landing provided with conventional windows. Further roof lights would be incorporated within the single storey rear element.

The design exhibits a largely traditional pitched roof form with side gables to the main two storey core with a similar treatment for the attached garage. The single storey rear addition is, however, shown with an asymmetric pitched roof.

The intended elevation treatment of the building shows a relatively contemporary approach involving a number of large windows to the principal rooms, including the living/dining room. This is reflected to some degree by the selection of standing seam metal roof sheeting throughout while the external wall finishes would predominantly comprise painted render with brick facing at ground floor level to much of the principal elevation and the exposed sections of the north west elevation as well as the rear and north western side elevations of the living/dining room element.

The dwelling is intended for occupation by the applicant, who is employed at the farm.

Although not expressly proposed as a dwelling for a rural worker under the provisions of paragraph 79(a) of the National Planning Policy Framework (which allows for such development as one of the stated exceptions to the general policies of avoidance of isolated homes in the countryside) or Policy H4 of the adopted Local Plan, it has been advised that, should Members be minded to accept the proposal subject to an agricultural occupancy restriction, there would be no objection.

The background to the proposal, including the justification for the absence of explicit promotion of the scheme as a 'tied' rural worker's dwelling, is set out in greater detail in the following sections of the report as an integral part of the assessment of its merits.

ANALYSIS

The main issues for consideration relate to the principle of development and its visual impact.

Principle of Development

There are a number of aspects of the principle of development that require detailed consideration in this case. The following narrative is therefore separated into sub-sections to help with an understanding of these and how they inter-relate with each other before providing a summary, having regard to the overall planning balance.

The site is located within the countryside where, ordinarily, the introduction of new build residential development would generally be resisted as being contrary to Strategy 7 (Development in the Countryside) of the adopted Local Plan insofar as it would not meet the requirements of any specific plan policy that permits such proposals.

However, in common with a number of proposals for such development that have been considered by the Authority over the past few years, the applicant is seeking to draw upon case law in support of the scheme, with particular regard to the principle of replacing a building eligible under the permitted development rights available, through the relevant provisions of the GPDO referenced above, for the residential conversion of agricultural buildings.

This matter was central to the case of *Mansell v. Tonbridge and Malling Borough Council* that was considered in September 2017 at the Court of Appeal and the wider issue as to the circumstances in which a 'fallback' development may be a material planning consideration for an alternative development scheme, such as a replacement building.

In the 'Mansell' case, planning permission was originally sought for the demolition of an existing agricultural barn and bungalow and the construction of four detached dwellings on a site in Kent. In recommending the L.P.A.'s planning committee to grant permission, the planning officer highlighted a realistic fallback position whereby the landowner could alternatively seek to develop the site by converting the 600 square metre barn into three dwellings using Class Q permitted development rights (subject to compliance with the limitation of 450 square metres set out within the class) and replacing the bungalow with a modern dwelling in accordance with the Council's relevant local plan policies.

The officer considered that the outcome of a scheme under Class Q would be a contrived development whereas the submitted scheme, to which the submitted planning applications related, offered a "more comprehensive and coherent development of the site". As such, and despite the location of the site in "open countryside" and outside of any settlement development boundary, the officer recommended approval.

Among the grounds of judicial review, made by an objector to the proposed development, were that the officer's view in considering the 'fallback' position was not realistic because there was evidence that the site owner would not have sought to convert the barn as it would have been uneconomic to do so. The fallback position was only therefore a theoretical scenario that the planning committee should not have taken into account as a material consideration.

However, the Court accepted that the council was entitled to conclude that there was a realistic fallback position. The evidence had established that there had been prior discussion between the council and the consultant acting for the site owners. It was therefore clear that the owners had firm intentions to redevelop the site. Indeed, alternative proposals had been advanced seeking the council's pre-application views.

It was therefore, in the judge's view, wholly unrealistic to imagine that were all such proposals turned down the owner of the site would not take advantage of Class Q permitted development rights to the fullest extent possible. It was not a precondition to the Council's consideration of the fallback option that the owner had made an application indicating an intention to take advantage of Class Q rights and there was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the owners to maximise the site value.

He therefore found that it was appropriate and necessary for the council to take the site owner's clear and firm intentions to redevelop the site into consideration when assessing the application and therefore the planning officer's recommendation to his members was sound.

In the Mansell case there had been no formal proposals submitted for the redevelopment. Conversely, in the case to which this report relates it is stated that there is a clear fallback position in the form of the prior approval granted in 2019 for both the change of use of three buildings on the farm to create three dwellings and the associated operational development. These three dwelling are not subject to any occupancy restrictions.

However, unlike the great majority of - if not all - similar proposals that have been considered by the Council previously in relation to other sites where an extant prior approval has been in place, it is not intended in this case that the proposed 'replacement' dwelling would be constructed on, or even adjacent to, the footprint of the relevant building with prior approval for conversion. As alluded to above, it would occupy a site some distance from the main farm complex where the three agricultural buildings with prior approval for conversion are located.

The potential therefore exists for the approved conversions to be implemented in line with the extant prior approval under Class Q as well as the dwelling to which this current application relates being constructed, if approved. Such a situation would result in the net addition of one dwelling; this being a new build unrestricted open market residential unit within the open countryside which would, ordinarily, be contrary to the established policies of restraint upon such development.

However, in acknowledgment of this possible scenario, the applicant has offered to enter into obligations, by way of a unilateral undertaking, to effectively 'swap' the extant prior approval in part, insofar as it relates to the conversion of one of the buildings, for the grant of permission for the proposed dwelling.

It is therefore contended that the latter would constitute a 'replacement' dwelling for one of the approved 'Class Q' units. It is on this basis that the proposal has been submitted.

The undertaking would also surrender any rights to seek prior approval under Class Q, or equivalent provisions, for the conversion of the building in question, using permitted development rights, in perpetuity.

Such a mechanism would therefore ensure that there would be no overall net addition to the number of residential units at the farm.

Indeed, to this end, a draft of such an undertaking has been provided. However, having been scrutinised by the Council's Legal team, there are a number of outstanding issues concerning the detail of its provisions that may need to be resolved in the event that Members decide to grant permission for the proposed dwelling.

However, in the light of issues of concern to officers regarding the intended siting of the proposed dwelling further to assessment of the proposal against the provisions of Local Plan Policy H6 (which consider the replacement of dwellings in the countryside and are discussed in the next section of the report), as well as the justification offered in response to these, enquiries were made of the applicant as to whether she would accept an occupancy restriction being placed upon the proposed dwelling, in the event of it being permitted.

The effect of this would be to bring a further range of factors, namely the criteria set out in Policy H4, which consider rural workers dwellings, into the balance of material considerations.

In response, there has been, until recently, an unwillingness to accept such a restriction on the development on the basis of the argument that, since the proposal would amount to the provision of a 'replacement' dwelling for one of the approved 'Class Q' dwellings that did not have the encumbrance of any occupancy restriction, it would be inequitable for it to have one imposed upon it.

However, it has now been confirmed that, should the Committee be minded to approve the proposal, there would be an acceptance of an occupancy restriction condition being attached to the grant of planning permission.

It is emphasised though that it is not being actively proposed as a rural workers dwelling under Policy H4.

The foregoing sections of the report therefore consider the proposal against the provisions of both Policies H6 and H4.

Policy H6

Policy H6 allows for the replacement of 'existing dwellings' within the countryside subject to four criteria being satisfied in full. These are set out, and the proposal considered against each in turn, as follows:

There is an existing, permanent, habitable dwelling located on the site, which is not a dwelling specifically granted planning permission under the agricultural or forestry exceptions policy

Although the proposed development would not involve the replacement of an existing dwelling as such, having regard to the principles established in the Mansell case set out above it is accepted that the fallback position of the Class Q prior approval means that, as a matter of broad principle, this criterion would be satisfied.

The dwelling to be replaced is not of architectural importance (whether Listed or not) or important in terms of contributing to landscape character or quality or local distinctiveness

It is not thought that there would be any particular issues of concern in regard to this criterion given that, should the proposed dwelling be granted permission in conjunction with an agreed unilateral undertaking and developed thereafter, the existing agricultural building to which the Class Q prior approval relates would be retained unaltered in any event. This situation is obviously different to the more usual position where the 'original' dwelling is sacrificed for the proposed replacement building.

The replacement dwelling is located on, or adjacent to, the footprint of the existing dwelling, or elsewhere within the curtilage of the building where a clear planning or environmental benefit will be achieved

The proposed dwelling would not be located on, or even within close proximity of, the agricultural building to which the prior approval relates (that the applicant is willing to effectively 'exchange' for a grant of permission). As already stated, it would be a considerable distance, in excess of 250 metres, away.

However, it is not considered that any conflict with this criterion necessarily carries significant weight in itself unless it would result in harm to any acknowledged planning interests.

In this regard, though, it is thought that the proposal would not only fail to occupy a location within the curtilage of the building that it would be 'replacing', or achieve a clear planning or environmental benefit as a result, but that it would unduly detract from the character and appearance of the surrounding landscape as described further below.

The replacement dwelling does not detract from the appearance and character of the landscape, and within the East Devon and Blackdown Hills Areas of Outstanding Natural Beauty harm the natural beauty of the landscape

It is considered that the proposed dwelling would be positioned where it would occupy an open corner of a large field where it is felt that it would appear unduly visually prominent and intrusive to the significant detriment of the character and appearance of the immediate area.

In particular, the building would be especially apparent in views from the adjacent road upon approach from both the west and north. In addition, it would feature most prominently in view from the public footpath to the east of the site, particularly upon approach from an easterly direction in which the footpath rises gently, initially alongside a hedged boundary to a field. The route of the footpath is within a direct line of sight of the application site over the entire length of this field, equating to a distance of around 180 metres, within which the proposed dwelling would appear as a significant intrusion into the landscape.

In response to expression of these concerns, comparisons have been made by the applicant's agent to the level of visual impact from the proposed dwelling upon the landscape with that of two nearby residential properties, namely Little Blacklands to the west and the farmhouse at Matthews Farm to the north.

Aside from the long-established fundamental principle that each proposal is required to be considered on its individual merits, it is considered that the landscape visual impact from the proposed dwelling would in this case be more harmful than that from either of these other properties. Neither are as prominent in as close a range views as the development would be; indeed, footpath no. 13 aside, there are no other public rights of way in the immediate vicinity of the site or either of the two properties cited. Furthermore, the dwelling at Matthews Farm is set well back from the road with the extent of closer range public vantage of the building largely limited to the entrance to the driveway serving the property while, despite being positioned immediately alongside the lane from the A373 leading to the site, Little Blacklands is itself largely screened by trees and hedges.

Conversely, being positioned amidst, and therefore much more closely related to, the large complex of farm buildings at Courtlands, the building with prior approval for conversion that the proposed development would 'replace' is considered to create a far less visually assertive impact upon the landscape. Moreover, this limited effect would be retained upon its conversion were it to be carried out.

In the light of these findings, it is thought that the proposed development would be unacceptable on the grounds of its adverse and detrimental impact upon the landscape.

As a consequence, it would also be contrary to the provisions of Local Plan Strategy 46 which, among other things, only permits development where it conserves and enhances the landscape character of the area and does not undermine landscape quality, and Policy D1 which essentially only permits development where it would respect the key characteristics and special qualities of the surrounding area. It would therefore also, by extension, contravene the provisions of overarching Strategy 7.

However, this needs to be balanced against other material factors that may otherwise weigh in favour of the proposal. As stated above, this includes assessment against the provisions of Policy H4.

Policy H4

This policy allows for dwellings in the countryside for agricultural, forestry or other rural business workers and is also criteria-based. Again, these are set out below and the proposal assessed against each.

There is a proven and essential agricultural or forestry or rural business need for the occupier of the proposed dwelling to be housed permanently on the unit or in the specific rural location for functional reasons

The proposal has been underpinned from the outset by two key strands in regard to this criterion; namely the role that the development would play in both facilitating succession planning for the business and improving the security of the farm.

As previously stated, it is intended that the dwelling would be occupied by the applicant. Whilst the business has been operated mainly by her parents, over recent months she has assumed increasing responsibility for running it. The success with which she has undertaken the role has meant that there is a keenness to continue with the present arrangements and allow her to develop the business further in future years.

In addition, it is considered that the commercial entrance to the farm, adjacent to which the proposed dwelling would be located, is vulnerable to access by potential thieves, particularly in view of its relative remoteness from the existing main farm dwelling. It has been advised that the farm suffered two such incidents during the period 2006-2010. Given this, together with the value of plant, vehicles and machinery held at the farm, it is argued that the presence of a dwelling at the entrance would help to deter unwelcome visitors to the site.

There is a particular worry regarding access to the farm during the night time in spite of the presence of alarm, camera and electronic gate systems at the premises. It is therefore felt that the addition of the proposed dwelling would assist in reducing the risk of incidents.

Paragraph 24.8 of the Local Plan promotes succession housing on larger working family farms as it recognises the need to retain young talented agricultural workers in the industry. It also states that the provision of on-site accommodation for family members employed in agriculture at the property will promote sustainability whilst retaining knowledge and expertise in the industry.

It does however also require that potential dwellings comply with the provisions of Policy H4.

Within the preamble to the policy, it is highlighted that 'essential need' refers to "a specific management activity or combination of activities which require the presence of a worker at most times if the proper functioning of an enterprise is not to be compromised and which cannot be achieved by any other practical means". Any "such need would relate to any particular event or combination of events that could lead to adverse animal welfare, crop or product quality or health and safety consequences which might threaten the stability and economic viability of an enterprise. In all cases, these would be events which could not be managed within normal working hours. Concerns relating to security will not, on their own, be sufficient to justify a new dwelling."

Aside from the perceived security benefits that the dwelling would enable to be realised, no other practical proven and essential functional need for the dwelling has been demonstrated in terms of the various forms of justification set out above.

As such, it is not thought that security issues alone properly justify the need for the development, regardless of its intended location.

In the case of a permanent dwelling, the rural business has been operational for a minimum of three years, it is demonstrable that it is commercially viable and has clear prospects for remaining so

No information has been requested of the applicant to enable her to seek to satisfy this criterion in light of the fact that the proposal has not been promoted under the auspices of a rural worker's dwelling to be considered against Policy H4. However, in view of the longstanding nature of the business, it is not thought that there are any particular issues in terms of its ability to meet this 'financial test'.

In the case of a temporary dwelling, a financial assessment, specifically in the form of a business plan setting out projected future operations, must demonstrate future operational viability

This criterion is not applicable to the application proposal since it involves the construction of a permanent dwelling.

The qualifying test of occupancy must involve at least one occupant being employed full time in the relevant rural business

Again, no specific evidence has been provided to demonstrate that this criterion would be met. However, based on the information available it is anticipated that the applicant would retain a full-time involvement in the business going forward.

There are no buildings on the operational holding suitable for conversion to meet the residential need or exiting dwellings available now or likely to be available within a nearby location or settlement

There is something of a paradox here insofar as, while there are three buildings on the farm that are not only suitable, but actually have the benefit of prior approval in place for conversion, and could therefore meet the claimed functional need for the applicant to live at the farm, the case in favour of the development is that it needs to be positioned where it would provide security at the commercial entrance to the site.

However, in the light of the conclusions reached above regarding the absence of significant weight that it is thought can be given to security concerns as properly justifying the need for the dwelling, it must be concluded that the proposal would also fail against this criterion.

In other words, had a proven and essential functional need for the proposed dwelling been established, it would ordinarily be necessary to first look at the availability and suitability of existing buildings for conversion to residential use in order to meet such need ahead of the provision of a new build dwelling. In the absence of any perceived demonstrable need for the dwelling on security grounds, the fact that no consideration has been given to the opportunities that exist for meeting any functional requirement through conversion of existing buildings must also weigh against the proposal in this case.

Any permission granted will be subject to an occupancy condition tying it to the relevant business on the proposed dwelling

Again, whilst not specifically underpinned by any case that the development is proposed under Policy H4, it has been confirmed that the applicant would have no objection to the imposition of an agricultural tie should the Committee be minded to grant permission on this basis.

Unilateral undertaking

It is also necessary to consider whether any resolution to accept the proposal would need to be subject to agreement of the various legal obligations necessary to ensure that it would amount to a genuine 'replacement' dwelling for the one of the three farm buildings with prior approval.

It could be argued that, as a 'standalone' rural worker's dwelling, and having considered the issues discussed above, if it were considered to meet the Policy H4 tests then it might be thought unreasonable to require the rights to one of the approved farm building conversions to be surrendered in exchange for a grant of permission.

While this is clearly not the position that officers are recommending, it is felt that it is a further issue that requires consideration should Members be minded to find in favour of the proposal.

Furthermore, it should be noted that any obligations that are entered into that would prevent permitted development rights for the conversion of the relevant farm building being used in perpetuity would be binding upon successors in title to the farm as well as the current applicant and farm owners. There is therefore a question as to the extent to which this is reasonable; this being one of the tests for legal agreements.

In this regard, while there is an acceptance that there is a degree of inequity in terms of the encumbrance that it would put in place for future owners/occupiers, any such persons would be aware of the existence of the obligations upon assuming title in much the same way as if there were a direction under article 4 of the GPDO, a condition of planning permission withdrawing permitted development rights or other restrictive obligations under section 106 of the Town and Country Planning Act that applied to the property/site.

Whilst, in the case of article 4 directions, there are normally compensatory arrangements in place, such arrangements are invariably not present in relation to planning conditions or section 106 obligations.

It is therefore felt that obligations to prevent successors in title from exercising permitted development rights for the conversion of the relevant farm building would be largely proportionate in terms of the benefits that would be derived from a grant of planning permission in exchange.

As such, it is concluded on this point that no more than very limited weight could be given to the appropriateness of avoiding the creation of an additional residential property at the farm through legal obligations.

However, at this stage it is reiterated that the wording of the submitted unilateral undertaking remains open to negotiation in relation to a number of detailed issues regarding particular clauses. Should Members be minded to accept the application proposal therefore, it would be recommended that the issuing of a final decision be deferred pending resolution of these outstanding matters.

Other Matters

It is proposed that foul drainage from the development would be discharged by means of a septic tank and soakaway system. To this end, a completed foul drainage assessment has been provided with the application particulars in line with the Council's validation requirements. The information that it provides complies with the standing advice of the Environment Agency in relation to the use of non-mains drainage systems.

The submission also includes a phase 1 ecological survey report. Its principal conclusions are that the proposed development would not affect any protected species and would retain adjacent hedges and trees.

Planning Balance

Paradoxically, although the proposal is mainly underpinned by the case that it would involve a replacement dwelling that meets the criteria set out in Local Plan Policy H6, and is not being expressly put forward under Policy H4 as a rural worker's dwelling, the two main strands of the applicant's argument in support of the proposed siting of the development involve succession planning for the farm and security. It is therefore thought that consideration against the Policy H4 criteria in this case is unavoidable.

The principal conclusions, in the view of officers, are:

- The broad principle of a 'replacement' dwelling, applying the principles established in the Mansell case, is acceptable;
- The principle of securing obligations under section 106, to forego the right to implement part of extant prior approval ref. 19/0967/PDQ - insofar as it relates to one of the three dwellings approved through conversion of agricultural buildings on the farm using permitted development rights - as well as permitted development rights in perpetuity in exchange for a grant of planning permission for the proposed dwelling, is acceptable;
- However, applying the Policy H6 criteria, the development would not be located on or adjacent to the footprint of the building with prior approval for conversion and is considered to be unacceptable owing to the detrimental impact of the dwelling upon the rural landscape character and appearance of the surrounding open countryside;
- Little weight can be given to the criteria of Policy H4 to offset this harm. Whilst the principle of provision of succession housing on farms is accepted by the Local Plan, it is subject to these criteria being met. However, this would not be the case. Security concerns cannot, in themselves, justify a functional requirement for a dwelling and no

other case to demonstrate how the development would meet the functional test that is applied by the policy has been provided;

- There is therefore no essential need for the dwelling in the location proposed, or indeed any further dwelling on the farm, to meet any functional requirement;

- In the event that such a need existed, there are existing buildings at the farm that are not only suitable and available for conversion - that could be used instead of the provision of a new build dwelling - but prior approval is in place for their conversion. The proposal would therefore still fail to meet all of the Policy H4 criteria.

In the light of these findings, it is concluded that the proposal would be unacceptable.

Whilst the support for the development expressed by the parish council and ward member are duly acknowledged, it is considered that the balance of the above conclusions weighs firmly against acceptance of the proposal.

RECOMMENDATION

REFUSE for the following reason:

1. The proposal would, in the absence of sufficient justification that a dwelling is necessary on the site to meet any proven and essential functional need or any evidence that it is required to replace the existing agricultural building with prior approval for residential conversion on a different site within the farm holding, represent the introduction of a development that would appear unduly visually intrusive in the landscape, and would fail to respect the key characteristics and special qualities of the area, to the detriment of the rural landscape character and appearance of the countryside. As a consequence, it would be contrary to the provisions of Strategies 7 (Development in the Countryside) and 46 (Landscape Conservation and Enhancement) and Policies D1 (Design and Local Distinctiveness), H4 (Dwellings for Persons Employed in Rural Businesses) and H6 (Replacement of Existing Dwellings in the Countryside) of the adopted East Devon Local Plan 2013-2031 and guidance contained within the National Planning Policy Framework (2019).

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council seeks to work positively with applicants to try and ensure that all relevant listed building concerns have been appropriately resolved; however, in this case the development is considered to be fundamentally unacceptable such that the Council's concerns could not be overcome through negotiation.

Plans relating to this application:

P-100 REV C	Proposed Site Plan	24.08.20
P-300 REV C	Proposed Elevation	24.08.20
P-200 REV G	Proposed Floor Plans	24.08.20

List of Background Papers

Application file, consultations and policy documents referred to in the report.