

Ward Coly Valley

Reference 21/1213/VAR &
21/2781/FUL

Applicant Mr. D Brazendale

Location Sceat Cottage Colyton EX24 6DP

Proposal (21/1213/VAR) Variation of condition 1 on permission 07/1771/VAR to allow building to be used as an unrestricted dwelling. (21/2781/FUL) Change of use from holiday cottage to unrestricted residential dwelling (Use Class C3)



RECOMMENDATION 21/1213/VAR: Refusal

RECOMMENDATION 21/2781/FUL: Refusal



		Committee Date: 19th January 2022
Coly Valley (Colyton)	21/1213/VAR	Target Date: 23.06.2021
Applicant:	Mr David Brazendale	
Location:	Sceat Cottage Colyton	
Proposal:	Variation of condition 1 on permission 07/1771/VAR to allow building to be used as an unrestricted dwelling.	

RECOMMENDATION: Refusal

		Committee Date:
Coly Valley (Colyton)	21/2781/FUL	Target Date: 11.01.2022
Applicant:	Mr. D Brazendale	
Location:	Sceat Cottage Colyton	
Proposal:	Change of use from holiday cottage to unrestricted residential dwelling (Use Class C3)	

RECOMMENDATION: Refusal

EXECUTIVE SUMMARY

These applications are before the Committee because the recommendations are contrary to the view of one of the Ward Members.

Both applications seek the same outcome, namely the ability to occupy Sceat Cottage as a permanent residence. The first application, which seeks to remove the condition limiting the use to holiday accommodation, cannot be approved because the resulting unrestricted use would conflict with the description of the development which case law has found to be unlawful.

Setting that issue aside, the main issue in both cases is whether the property is in an appropriate location for permanent occupation having regard to accessibility to local services and facilities.

Colyton is the nearest settlement providing a range of services and facilities and is about 1km from Sceat Cottage (1.3km to the Market Place). Journeys would not be convenient on foot or bicycle owing to the lack of a dedicated footway, limited lighting, the steep terrain, impeded visibility, lack of verges for refuge and the speed of traffic in places. For the same reasons the nearest bus stop, which is 275m in the direction of Colyton, cannot be easily accessed.

A bus connecting Axminster to Beer passes Sceat Cottage hourly during the day, with no evening service, a reduced service on Saturdays and no service on Sundays and Bank Holidays. There is no evidence that it operates a hail-and-ride service but even if it did the limitations of the service would not make it a convenient alternative to the car.

Given the lack of safe and convenient alternatives to car travel it is likely that future occupants of the dwelling would be highly car dependent.

In summary, the removal of the condition to allow unrestricted residential occupation of Sceat Cottage would not deliver an enhancement to the building's setting and would result in a dwelling that is not located close to a range of accessible services and facilities. Therefore neither application would accord with parts b) and c) of Policy D8 or Policy TC2 and Strategy 5B of the Local Plan. In the absence of specific policy support for the proposal it would also conflict with Strategy 7. Owing to these conflicts, and in the absence of any material considerations to justify reaching a different view, the proposal is recommended for refusal.

CONSULTATIONS

Local Consultations

21/1213/VAR

Parish/Town Council

Application not supported.

Our comments were as for the 20/2394 application plus item 3 below -

1. The 07/1771/VAR was clear in the use of Scent Cottage was only to be as a holiday let.

2. The Parish Council did not support the provision of a new dwelling in the countryside and which is part of an AONB.

3. As per the Regulation 16 Submission version of the Colyton Parish Neighbourhood Plan, Para 8.13 which states;- 'In describing the built-up area we are also confirming support for Strategy 7 of the East Devon local Plan which classes the rest of the Parish of Colyton, including the village of Colyford, as countryside where development should be severely restricted and will only be permitted where it is in accordance with a specific Local Plan or Neighbourhood Plan policy'

Coly Valley - Cllr Paul Arnott

I hope it is not too late to comment that I would be happy to support this as an application - appreciating the various nuances - and having discussed this matter with the applicant I am wholly satisfied both of his deep local roots and of his intention to retire to this property.

Whilst always keen to protect holiday accommodation where the case is compelling, I feel that in this case the local economy would benefit even further from Mr Brazendale's year-round contribution.

I would be very happy to attend a chair's delegated meeting if this might be useful

21/2781/FUL

Coly Valley - Cllr Paul Arnott

Just to reconfirm my own support as ward member.

Parish/Town Council

The Colyton Parish Council do not support this application.

Our comments are as the 20/2394/VAR application, i.e.

- i. The 07/1771/VAR was clear in the use of Scent Cottage was only to be as a holiday let.
- ii. The Parish Council did not support the provision of a new dwelling in the countryside and which is part of an AONB.

Both applications

Other Representations

For the two applications combined, three representations in support have been received making the following comments:

- There are 4 houses in the block and 2 of the 4 are already permanent dwellings.
- Given the demand for houses in Colyton it is madness not to allow permanent residents.
- The house would not be empty for half of the year and would bring continuous spending to the area.
- The house is already there and would cause no extra impact to the AONB.
- The bus service runs behind the house to take householders directly into Colyton without impacting on the parking issues.
- Anyone who would have previously rented the house would now use one of the many BandB or air BnB in the area.
- See no difference with the applicant living here permanently.
- It would increase the security of neighbouring properties with a more permanent resident.
- It would also be more regular support for the local businesses and schools in Colyton.

- The reduction of car transport with one to two cars travelling from around the country to the property over 30 weeks of the year and the environmental impact should be considered.

Technical Consultations

None.

PLANNING HISTORY

Reference	Description	Decision	Date
98/P1062	Convert Higher Stables To Two Units Of Holiday Accommodation	Refusal Appeal allowed	15.10.1998 12.04.1999
99/P1737	Conversion Of Stables To Two Units Of Holiday Accommodation (Amended Scheme)	Approval with conditions	07.12.1999
07/1771/VAR	Variation of condition on planning permission 99/P1737 for use as holiday accommodation	Approval with conditions	16.08.2007
20/2394/VAR	Removal of condition 1 on planning permission 07/1771/VAR (Variation of condition on planning permission 99/P1737 for use as holiday accommodation) to allow the building to be used as an unrestricted dwelling	Refusal	08.01.2021

POLICIES

Colyton Neighbourhood Plan (In force following approval at referendum)

Policy No. Coly1 Protecting the Natural Environment

Policy No. Coly6 Sustainable Development

Policy No. Coly11 Tourism Development

Policy No. Coly14 Public Transport

Policy No. Coly15 Walking and Cycling Routes

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)
D1 (Design and Local Distinctiveness)
D8 (Re-use of Rural Buildings Outside of Settlements)
TC2 (Accessibility of New Development)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)
National Planning Practice Guidance

Site Location and Description

Sceat Cottage is one of a pair of semi-detached cottages which form part of a small group of properties to the northeast of Mounthill Farm. The properties are set down and back from the southeast side of the classified road that runs northeast from Colyton to Whitford. The application site lies approximately mid distance between Colyton and Whitford and occupies an elevated hillside position within the East Devon Area of Outstanding Natural Beauty. The site is in open countryside outside of any designated built-up area boundary.

Proposal

This report addresses two applications which seek the same outcome: the removal of a restriction which means that Sceat Cottage can only be used as holiday accommodation and not as a permanent residence.

The first application, 21/1213/VAR, seeks to remove the relevant condition from the extant planning permission.

The second application, 21/2781/FUL, starts afresh and seeks an entirely new permission for use as an unrestricted dwelling.

The first application has not been determined to date because case law and appeal decisions have since established that a permission cannot be varied if the resulting use would conflict with the use originally permitted. The original proposal was for 'holiday accommodation' but the applicant seeks unrestricted accommodation. This would result in a conflict between the description on the planning permission (which must remain the same as the original description) and the use to which the building would be put. Because of this conflict planning permission cannot be granted and this forms a reason for refusal for the first application.

ANALYSIS

Setting the legalities of the processing of the first application aside, the main issue for consideration in both applications is whether the dwelling is in an appropriate location for unrestricted occupation having regard to local and national planning policies. Full weight can be given to the Colyton Parish Neighbourhood Plan 2020-2031 following overwhelming support at the referendum on 2 December.

Location

Sceat Cottage is one of two holiday cottages created through the conversion of the former 'higher stables' at Mounthill Farm in around 2000/2001. It has four bedrooms, two parking spaces and a garden. Access is via a shared driveway that serves three neighbouring properties, including the adjoining barn conversion, Robins View. These properties are set down and back from the southeast site of the classified road that runs northeast from Colyton to Whitford. Other than these properties and Mounthill Farm, there are no near neighbours and the site is surrounded by open countryside which is within the East Devon AONB.

Strategy 7 of the Local Plan establishes that the countryside is defined as those parts of the district that are outside the Built-up Area Boundaries and outside of site specific allocations. This site is within neither and should therefore be regarded as a countryside location in the context of the LP. Policy D8 of the LP supports new uses for buildings in the countryside subject to a number of conditions. For the re-use of rural buildings for residential purposes the policy establishes that the conversion must enhance its setting and the building must be located close to a range of services and facilities to meet the everyday needs of residents. Strategy 5B and Policy TC2 of the LP seek to ensure that new development is well located to be accessible to minimise the need to travel by car.

The nearest settlements to Sceat Cottage are Colyton and Whitford, both of which are about 1km away in opposite directions. Whitford has a church and a village hall but Colyton offers a wider range of services and facilities within its town centre about 1.3km away.

Journeys to either settlement would not be convenient on foot or bicycle on a regular basis owing to the lack of a dedicated footway, limited lighting, the steep terrain, impeded visibility, lack of verges for refuge and the speed of traffic in places.

The nearest bus stop to Sceat Cottage is at Mounthill Cross which is 275m away in the direction of Colyton. This stop is served by the 20 bus between Seaton and Taunton which stops four times per day in each direction from Monday to Saturday. It is also served by the 885 bus between Beer and Axminster which stops 11 or 12 times per day in each direction from Monday to Friday, with a reduced service on Saturdays and no service on Sundays. Neither bus runs in the evenings on any day.

The route to the bus stop suffers all the shortcomings identified in respect of the walking route into Colyton, albeit for a shorter distance. In low light or poor weather conditions this would not be an attractive or safe journey on foot and therefore, notwithstanding the frequency of the bus service, it is unlikely to be a realistic alternative to the car. Furthermore, whilst it is noted that the 885 bus passes Sceat Cottage, there is nothing to indicate that it operates a hail-and-ride service and even if it did the site is not well served in the evenings and at weekends.

There is a limited ring and ride service but this would not be a dependable alternative for day-to-day needs.

Paragraph 10.11 of the Neighbourhood Plan says "We want people to get around much more often without using the motor car. It is not easy nor particularly safe in much of the Parish because of the need to walk or cycle on roads and lanes that are

shared with a variety of, often very large, commercial and agricultural vehicles." Sceat cottage is in one such location where walking and cycling is not easy or safe. The only alternative to car use is travel by bus but the bus stop is not easily accessed and the service is limited to day times, with no service on Sundays.

Owing to the very limited alternatives to car travel, permanent occupants of the property would be likely to rely on the use of a private car for most, if not all, journeys and this would conflict with part c) of Policy D8 as well as Policy TC2 and Strategy 5B of the Local Plan.

Other material considerations

The applicant has drawn our attention to a number of appeal decisions which they claim support their case.

The first is an appeal at the former Otter Valley Golf Centre where, following the closure of the facility, it was proposed to convert a barn to a dwelling. In that case the Inspector considered that the established use as a golf centre would have attracted large numbers of visitors who travelled by car and that the proposed use would be likely to generate far fewer vehicle movements. The substantial reduction in vehicle movements heavily influenced the Inspector's decision and the appeal was allowed. Whilst other factors, such as being able to hail a bus, cycle to Upton or make a short car trip to Honiton, were part of the Inspector's assessment, these were not overriding factors compared to the substantial reduction in car travel. Such a benefit would not arise in relation to Sceat Cottage and therefore the Otter Valley appeal is of limited relevance.

The second appeal concerned Appledore Farm in a remote part of the countryside within Farway parish. The proposal was to remove a holiday condition to allow permanent occupation and the Inspector allowed the appeal concluding that "a residential use is already existing and there is no evidence that any increase in travel would be significant. I, therefore, find no conflict with the aims of Policy TC2". However, this analysis fails to recognise that the purpose of the policy is not simply to compare one use to another and approve the one that would generate least traffic.

Paragraph 26.4 of the Local Plan states "One of the key means by which the District Council can most positively influence travel and movement patterns is through promoting development in the most sustainable locations." This means considering the needs of future occupants and whether those needs could be met by way of active travel. Tourism is a major part of the local economy and many tourists in this rural district will inevitably arrive by car and want to travel to places that are not readily accessible on foot, by bike or using in public transport. To some extent these car journeys are offset by the economic benefits. In contrast, a settled resident should be given opportunities for sustainable travel to access the services and facilities they need day to day. To this end the Local Plan differentiates between tourist accommodation, which benefits from some support in rural areas, and dwellings which are directed to towns and villages. Owing to its failure to recognise the context within which Policy TC2 sits, this appeal is of limited relevance.

The third appeal concerns the conversion of a barn to a dwelling outside Newton Poppleford. In that case the barn was not considered to be in an isolated location, being around 400m from the edge of the village and close to other dwellings. The lane leading to the village was also relatively quiet. These conditions contrast with Sceat Cottage which is on a busier, steeper road and further from the built-up area. These differences are significant enough to be a deterrent to walking and cycling and therefore the appeal is of limited relevance.

What is evident from these appeals is that every case must be considered on its merits. Moreover, for every appeal that has been allowed it is possible to identify one that has been dismissed (for example: APP/U1105/W/21/3269783 (Apple Barrel Barn); APP/U1105/W/18/3202489 (Bucknole Farm); and APP/U1105/W/18/3206768 (Hawkern Cottage)). The current application should therefore be determined on its own facts rather than those of any other case.

Other matters

Whilst neither the Local Plan nor the Neighbourhood Plan contain policies resisting the loss of holiday accommodation that would apply to this proposal, the NP notes the value of tourism to the local economy and promotes sustainable growth of tourism businesses. In this context the loss of holiday accommodation would be a disbenefit but not one that carries material weight given the lack of any relevant policy.

It is claimed that a lack of recorded accidents involving pedestrians and cyclists on Colyton Hill is evidence that the road is safe for such users. However, it could equally be evidence that the road is unsafe and that few pedestrians and cyclists use it for that reason. This evidence is therefore given little weight in the overall balance.

A more permanent residential use might give rise to more impact on the immediate setting of Sceat Cottage through domestic paraphernalia such as boundary enclosures to improve privacy, erection of garden buildings, a washing line, etc. However, in the context of the neighbouring properties such changes would not appear out of character or harmful to the landscape and scenic beauty of the AONB.

CONCLUSION

The removal of the condition to allow unrestricted residential occupation of the building would not deliver an enhancement to the building's setting and would result in a dwelling that is not located close to a range of accessible services and facilities. The removal of the occupancy restriction would therefore not accord with parts b) and c) of Policy D8 or Policy TC2 and Strategy 5B of the Local Plan. In the absence of specific policy support for the proposal it would also conflict with Strategy 7. Owing to these conflicts, and in the absence of any material considerations to justify reaching a different view, the proposal is recommended for refusal.

RECOMMENDATION

REFUSE 21/1213/VAR for the following reasons:

1. The application site lies in open countryside outside of any designated Built up Area Boundary or Strategic allocation within the East Devon Local Plan and where there are no Local or Neighbourhood Plan policies that would explicitly support the development. Unrestricted residential development in this location would be unsustainable due to the distance to and access route to essential services and facilities required for daily living and where public transport access is limited. As a result, future occupiers are likely to be heavily reliant on the use of private transport for the majority of journeys and the proposal would be contrary to the provisions of Strategy 5B (Sustainable Transport), Strategy 7 (Development in the Countryside) and Policies D8 (Reuse of the Rural Buildings Outside of Settlements) and TC2 (Accessibility of New Development) of the East Devon Local Plan 2013-2031 and the guidance within the National Planning Policy Framework.

2. Removal of the condition would result in a conflict between the intended unrestricted use of the dwelling and the description of the development ('holiday accommodation'). A change in the description of the development to accommodate the proposed use is also beyond the powers under s73 of the Town and Country Planning Act 1990 and cannot be made. Therefore planning permission cannot be granted and a fresh planning application is required.

Plans relating to this application:

None.

REFUSE 21/2781/FUL for the following reasons:

1. The application site lies in open countryside outside of any designated Built up Area Boundary or Strategic allocation within the East Devon Local Plan and where there are no Local or Neighbourhood Plan policies that would explicitly support the development. Unrestricted residential development in this location would be unsustainable due to the distance to and access route to essential services and facilities required for daily living and where public transport access is limited. As a result, future occupiers are likely to be heavily reliant on the use of private transport for the majority of journeys and the proposal would be contrary to the provisions of Strategy 5B (Sustainable Transport), Strategy 7 (Development in the Countryside) and Policies D8 (Reuse of the Rural Buildings Outside of Settlements) and TC2 (Accessibility of New Development) of the East Devon Local Plan 2013-2031 and the guidance within the National Planning Policy Framework.

Plans relating to this application:

Block Plan	16.11.21
Location Plan	16.11.21

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 planning 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.

Informative: Confirmation - No CIL Liability

This Informative confirms that this development is not liable to a CIL charge.

Any queries regarding CIL, please telephone 01395 571585 or email cil@eastdevon.gov.uk.

List of Background Papers

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