

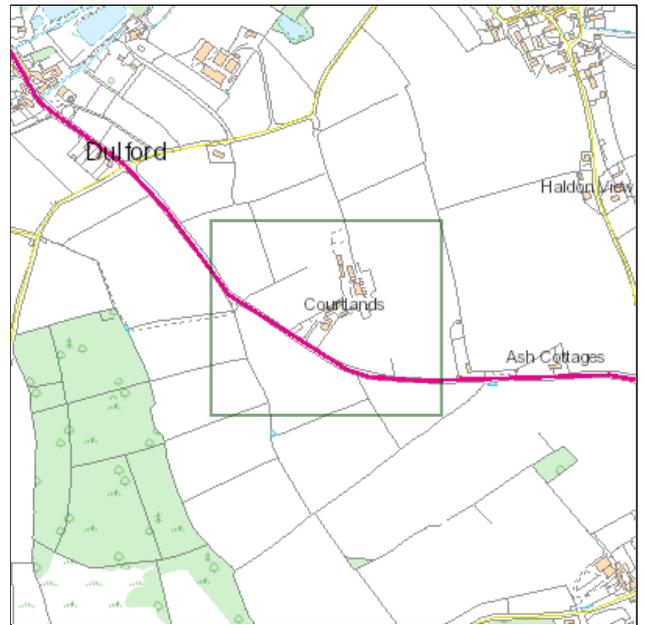
Ward Tale Vale

Reference 21/2523/FUL

Applicant Mr W Light

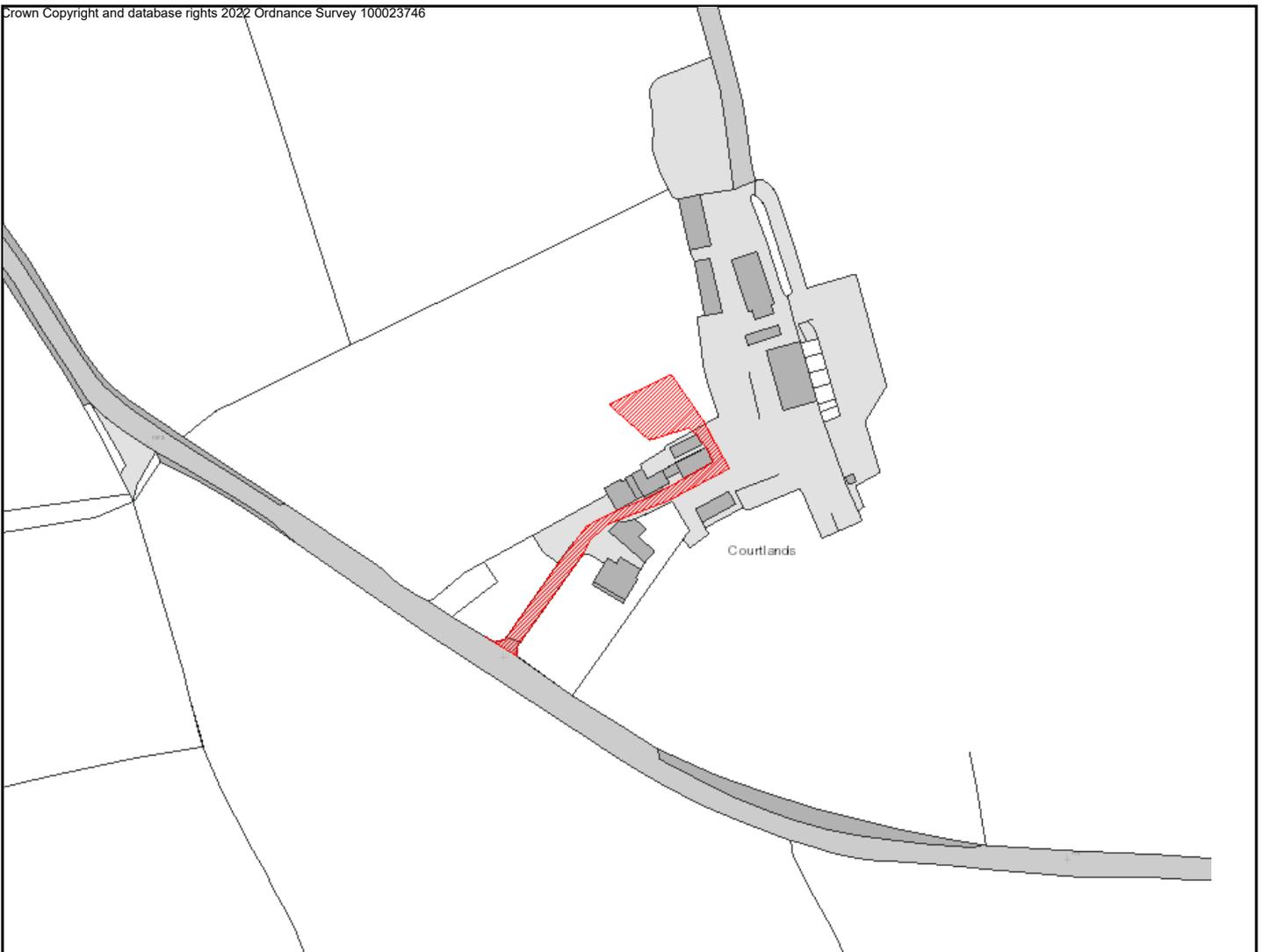
Location Courtlands (Edenvale Turf) Dulford Cullompton
EX15 2EQ

Proposal Construction of dwelling in place of conversion of existing agricultural building to form one of dwellings (unit B) subject of prior approval ref 19/0967/PDQ.



RECOMMENDATION: Refusal

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		Committee Date: 14th June 2022	
Tale Vale (Broadhembury)	21/2523/FUL	Target 24.11.2021	Date:
Applicant:	Mr W Light		
Location:	Courtlands (Edenvale Turf) Dulford		
Proposal:	Construction of dwelling in place of conversion of existing agricultural building to form one of dwellings (unit B) subject of prior approval ref 19/0967/PDQ.		

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EXECUTIVE SUMMARY

This application is brought before Committee in view of the difference of opinion between officers and the ward member.

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

The intended site for the dwelling, which would be occupied by a 'next generation' member of the family as part of the succession planning for the business, is close to the main complex of farm buildings at Courtlands.

However, the proposal is not being promoted on the basis of it being required to meet an essential functional requirement for a dwelling to house a rural worker to be considered against the provisions of Local Plan Policy H4. It is instead being justified 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 by which time, in line with the relevant legislative requirements, the development should be completed. However, at the present time it is understood that no start has even been made on any of the approved conversion work.)

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.

Members may recall that a similar proposal (subject of application ref. 20/1801/FUL) for a dwelling of a different design on a site some distance to the north of the farm complex, intended for occupation by a different family member, was refused, in March 2021, by the Planning Committee.

Whilst the fundamental principle of substituting the approved conversion for a new build dwelling in line with case law (Mansell) was recognised, it was considered that the proposal failed to meet the criteria set out in Policy H6 insofar as it would not have been located on or adjacent to the footprint of the 'existing' dwelling (i.e. the farm building with prior approval for conversion with which a grant of permission would have been exchanged), or elsewhere within the curtilage of the building where a clear planning or environmental benefit would be achieved. More critically, it was thought that it would have been positioned where it would appear unduly visually prominent in the surrounding landscape to the detriment of its character and appearance.

A subsequent appeal against the decision was dismissed in April this year. In his findings, the Inspector essentially supported the Council's grounds for refusal in full. In doing so, he particularly highlighted the failure to meet the requirement of Policy H6 that the replacement dwelling be positioned on or adjacent to the footprint of the building with prior approval for conversion that it was intended to 'replace' and the absence of any other clear benefit from its intended siting. He therefore found that the development would be both contrary to this policy and, owing to its positioning, harmful to the character and appearance of the landscape.

The Inspector also highlighted, in relation to the failure to meet Policy H6, the likelihood of the building with prior approval for conversion being retained, even if not converted, in the event of a grant of permission for the dwelling, whereas the latter would involve an additional new building within the rural landscape.

The current proposal involves a site within the holding that would clearly be better related, both spatially and visually, to the existing complex of buildings than the previous appeal scheme. However, it would still be approximately 35 metres away from the building, the conversion of which would be 'exchanged' for the proposed dwelling. It would therefore still fail to meet the fundamental policy requirement that the 'replacement' dwelling be located on, or adjacent to, the footprint of the 'existing' dwelling.

Although the removal of a mobile home (in relation to which there is no known history in the Council's records, or indeed any details as to its use) from a position immediately alongside the intended siting of the dwelling is being offered as a 'clear environmental or planning benefit' to offset this conflict with both the policy and the appeal Inspector's findings, it is not accepted that the benefit that would be derived from this would outweigh the identified breach of the policy requirement.

Equally, although the intended siting of the dwelling would be less harmful, in wider landscape views, to the character and appearance of the area than the previous appeal scheme, the likelihood is that it would still relate to the introduction of an additional building owing to the ongoing retention of the existing building with prior approval for conversion in much the same way as before. In essence, therefore, the proposal would amount to the addition of a further building, without justification, to the complex and to the wider countryside.

Furthermore, while likely to result in lesser visual harm to the landscape, it is not to suggest that it would result in no such harm. Indeed, the development would be in the foreground of views of the farm complex that are available from the nearby A373 County road and would add to its built form in a manner that would be harmful to the rural character and appearance of the area generally, more especially given the policy conflict described above and the lack of sufficient justification for this additional new building.

Moreover, although reference has been made by the applicant's agent to the effect of tree screening in these views, the reality is that the level of tree cover that exists would not be insufficient to achieve a satisfactory screen that would assist in assimilating the development in to the landscape.

Finally, it is also highlighted that the 'fallback' position represented by the extant prior approval for the conversion of the farm buildings is arguably much weaker at this time given the requirement that these be completed by July this year in order to continue to benefit from the permitted development rights available.

It is with these various factors in mind that the proposal is considered to be unacceptable and therefore refusal is recommended.

CONSULTATIONS

Local Consultations

Parish/Town Council

MINUTES OF PLANNING MEETING HELD ON FRIDAY 15 OCTOBER, 2021 AT 5.30 PM

Present: Councillors Bradshaw, Powell & Howgill

21/2523/FUL - Courtlands, Dulford, Cullompton, EX15 2EQ - replacement dwelling

SUPPORT

Tale Vale - Cllr Philip Skinner

In reference to the planning application at Courtlands Farm, Dulford and our subsequent telephone conversation, I am formally writing to you to inform you of my position on this application as Ward member.

I am in full support of this application for as I do very believe in supporting housing for key workers being employed on the land of which this dwelling is to be situated.

In the event that this application is not delegated, I would ask for this application to come before committee.

I reserve the right to have a change of opinion if evidence comes before me of which I was not aware at the time of writing.

Technical Consultations

None.

Other Representations

No representations relating to the application proposal have been received from any interested third parties.

PLANNING HISTORY

Reference	Description	Decision	Date
20/1801/FUL	Proposed replacement dwelling.	Refusal and dismissed on appeal.	19.03.2021 Appeal dismissed 05.04.2022
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)

(There is no neighbourhood plan in force for Broadhembury parish.)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

Site Location and Description

Courtlands is a residential property that, together with an adjacent complex of farm buildings, forms the premises of 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 off the highway to the east at this point.

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.

Background

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 remains extant until 26th July 2022, by which time the development, in order to meet one of the conditions attached to the permitted development right, must be completed.

Planning permission was subsequently sought in 2020 (application 20/1801/FUL refers) for the construction of a two storey dwelling within the north eastern corner of a field immediately adjacent to the 'business' entrance to the farm; more specifically, 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).

This was proposed in lieu of one of the agricultural building conversions granted prior approval and in line with the legal principles established in the 'Mansell' case that gave weight to circumstances where there existed a 'fallback' position in terms of an alternative development, whether granted permission or prior approval or where the potential for such a grant was in place.

However, although the draft of a unilateral undertaking was submitted, no legal mechanism was agreed with the then applicant to ensure that the scheme could be carried out, in the event of a grant of permission, in lieu of one of the three units subject of the Class Q prior approval; this being necessary to avoid a situation where there would otherwise be a net gain of a dwelling in an open countryside location, outside of any defined settlement boundary, contrary to established policies of restraint upon such development.

The application was refused, following consideration by the Planning Committee in March 2021, for the following reason:

'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).'

An appeal against this decision was subsequently lodged with the Planning Inspectorate in August 2021 and dismissed in April this year.

Among the Inspector's principal findings were that *"the proposed.....dwelling would see the introduction of a new house within the countryside and would urbanise a section of this field. This residential development in a generally open countryside*

location, visible from public vantage points, would not conserve the rural landscape. Adding a dwelling in the location proposed would only erode the general openness of this landscape with its introduction of a new building and changing the rural and agricultural character of this part of the field".

Although recognising the valid fallback position, in the form of the extant prior approval for the Class Q conversions (despite there being no 'existing' dwelling to replace), in consideration of the proposal against Local Plan Policy H6, and more especially the criterion that it contains that requires that *"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"*, he opined that *"the proposed dwelling would be located a significant distance from the location of the barn which has permission to be converted to a dwelling."*

Thereafter, the question in his mind was whether there was a 'clear planning or environmental benefit' arising from the position of the proposed dwelling to offset this identified conflict with policy. His conclusion was that there were 'significant disbenefits' from the intended siting when compared with the location of the building approved for conversion that it was proposed to 'replace'; in so doing, he found the following:

"The barn to be converted is set within or near a cluster of other buildings which reduces its visual impact within the landscape. Furthermore, the approval is for a conversion of an existing building which would likely remain even if not converted, whereas the proposal would be for an additional new building within the rural landscape. As such, the proposal does not meet with this criterion of policy H6 as it is not located on, or adjacent to, the footprint of the existing building to be converted. Nor is it, on balance, in an alternative location where there is clear planning or environmental benefits. Indeed, the proposed siting of the dwelling would have the disbenefit of detracting from the appearance and character of this rural area. The conversion as approved would have a less visually intrusive impact upon the landscape. The proposal is therefore harmful to the character and appearance of the landscape and is also contrary to policy H6 which relates to replacement dwellings in the countryside."

In response to an argument made by the appellant that the development was necessary as part of the future succession planning for the farm, it being intended for occupation by the applicant's daughter, the Inspector was of the view that *"there is already consent for dwellings (i.e. in the form of the Class Q prior approval) at this site which could potentially address this matter"*.

Proposed Development

The current application proposal involves, conceptually, a very similar proposal to that subject of application ref. 20/1801/FUL. However, it relates to the construction of a dwelling of a different form, design and external appearance on a different site at the farm as a substitute for and to 'replace' one of the other two buildings to which the prior approval granted under ref. 19/0967/PDQ relates.

As with the previous appeal scheme it is intended to be occupied as part of the succession planning for the business, this time by the applicant's son. However, again as before, it is not explicitly proposed as a rural worker's dwelling.

However, once again, a draft unilateral undertaking, containing obligations that seek to ensure that only one dwelling is built out in the event of the application being approved, has been provided with the application.

The existing complex of buildings at Courtlands/Edenvale Turf is very broadly laid out in the form of an inverted L-shape with a field to its west, within the crook of the 'L', which falls gently towards the A373. The application site is close to the south eastern corner of this field, but immediately to the north of a mobile home stationed to the rear of one of the older buildings within the complex.

It is intended that this mobile home be removed as part of the application proposal.

The submitted details of the proposed development itself show an essentially one and a half storey three bedroom dwelling with a principal east-facing aspect towards a new driveway that would extend north off of the existing access way through the complex and the remainder of the farm beyond. Although principally of regular plan form with a fully pitched roof with gabled side elevations, the design seeks to maximise the opportunity for an enhanced level of amenity that would be provided by extensive rearward, west-facing views over the open countryside. To this end, the rear elevation would incorporate a slightly subservient two storey gable projection, with a predominantly glazed treatment within the gable itself, at the northern end with a pitched roof dormer alongside it that would break the line of the roof eaves and contain a pair of French doors with a Juliet balcony. The treatment to the remaining three elevations would, by contrast, appear relatively plain.

The exact nature of the intended external wall and roof finishes is, at this stage, unclear. Whilst the application itself specifies the use of 'block and render' and 'stone', together with a standing seam roof, the design and access statement that accompanies it refers to the materials palette comprising 'predominantly brick walling, with some stone, with a slate roof' and the submitted elevation drawing appears to indicate a brick finish with either tile or slate cladding, or horizontal boarding, to the entirety of the two storey gable projection, the dormer and at first floor level on the main core of the building.

The scheme also makes provision for an associated garden area for the property, although no detail is provided as to the form of the intended treatment of its boundaries.

Considerations/Assessment

The principal issue in this case is the extent to which the Inspector's findings in relation to the previous appeal scheme are also material to the current proposal, or whether there are any other particular considerations that may be regarded as carrying greater weight in the overall planning balance.

In this regard, it is noted that the Inspector took a very clear approach to determination of the appeal in:

- a) Consideration of the proposal against the key criterion of Policy H6 that requires that the replacement dwelling is located on, or adjacent to, the footprint of the 'existing' dwelling, or elsewhere within its curtilage where a clear planning or environmental benefit would be achieved.
- b) Finding that the dwelling (to which the appeal related) would be located a significant distance from the barn with prior approval for conversion and therefore, coupled with the likelihood that it would amount to an additional new building within the rural landscape, amounting to a failure to meet with this criterion.
- c) Highlighting the absence of any 'clear planning or environmental benefits' from the proposed alternative location of the development relative to the building with prior approval for conversion.

In the case of the current proposal, however, it is argued by the applicant's agent that the site for the dwelling now proposed would clearly be much closer, and therefore better related, to the existing complex of buildings, as well as the main yard area, and, as such, would not detract from the rural landscape character and appearance of the area. More especially, it would only be within 35 metres of the relevant building with prior approval that it would 'replace'.

It is also contended that the proposed removal of the mobile home from the land represents a 'clear planning or environmental benefit' weighing in favour of the argument that it meets with the Policy H6 criteria and therefore the scheme as a whole.

There is certainly no argument that the intended siting of the dwelling now proposed is much closer and better related, both spatially and visually, to the existing group of buildings at Courtlands than that subject of application 20/1801/FUL and the subsequent appeal. In that regard alone, there are clear differences between the two proposals.

However, there remains the basic conflict with the provisions of Policy H6, given great weight in the Inspector's findings in dismissing the previous appeal scheme, in that the proposed dwelling would - again - not be located on the footprint of the building with prior approval for conversion.

Moreover, despite being considerably closer to this building than the appeal proposal to one of the other buildings that it would have 'replaced', it is not thought that it could reasonably be described as being positioned 'adjacent' to it, either, at around 35 metres distance.

It is then necessary to consider whether the intended position for the dwelling would result in a 'clear planning or environmental benefit' that would outweigh this fundamental conflict with this policy criterion.

Indeed, it is with this objective in mind that the removal of the mobile home alongside the site is proposed.

However, whilst this would result in modest visual benefit to the character and appearance of the locality, it is not considered that it would weigh sufficiently strongly in favour of the development to offset the basic failure to comply with the policy requirement described above that formed the main part of the appeal Inspector's case in his decision.

The proposal would also fail to overcome other 'significant disbenefits' set out in the Inspector's decision letter, notably in relation to the likelihood of the building with prior approval for conversion remaining in place, even if not converted, with any approved new build dwelling therefore amounting to an additional new building in the countryside/rural landscape that, under ordinary circumstances (i.e. without the 'fallback' situation of an extant prior approval for an alternative form of development), would not be permitted in the absence of robust justification. In this case, however, that building would be a dwelling with no justification that would normally be resisted.

Furthermore, notwithstanding its better spatial relationship with the existing group of buildings at Courtlands, it is maintained - given an assumption that the building with prior approval for conversion would remain in place - that the proposal would introduce an additional building that would detract from the character and appearance of the landscape in medium distance views towards the site that are available from the A373. Despite observations made by the agent highlighting a presence of mature trees in these views that would provide screening of the development, the situation in reality is that there are two individual mature trees within the field between the A373 and the intended siting of the dwelling with a further small number of trees along the hedged boundaries to the side and rear. Whilst these would mitigate the impact of any development to a degree, they certainly would not provide the level of screening that is suggested by the agent.

It is material to the consideration that the 'fallback' situation represented by the extant prior approval for the conversion of the 3no buildings on the holding is weakening given its upcoming expiry date in July, the apparent lack of any commencement of work to implement it and the requirement that the development be completed ahead of its expiry date in line with one of the conditions set out in Class Q.

Drawing together the various material factors set out above, therefore, it is considered that the proposal would be unacceptable.

RECOMMENDATION

REFUSE for the following reason:

1. The proposed development would amount to the construction of a replacement dwelling within the countryside to which the provisions of Policy H6 (Replacement of Existing Dwellings in the Countryside) of the adopted East Devon Local Plan 2013-2031 would apply having regard to the accepted 'fallback' position of an extant prior approval for the change of use of an existing agricultural building on the holding under the provisions of Class Q of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended). However, the proposal would be contrary to the requirement set out

in this policy that such a dwelling be located on, or adjacent to, the footprint of the building to which the prior approval relates. Furthermore, in the opinion of the Local Planning Authority, it has not been adequately demonstrated that the proposed siting of the dwelling would achieve a clear planning or environmental benefit that would outweigh this fundamental policy conflict. As a consequence, the proposal would be likely to result in the introduction of an additional building, with no justification, to an open countryside location that would fail to respect the key characteristics and special qualities of the area and would detract from its rural landscape character and appearance. This would be in conflict with further provisions set out in Policy H6, as well as those of Strategy 7 (Development in the Countryside) and 46 (Landscape Conservation and Enhancement) and Policy D1 (Design and Local Distinctiveness), of the adopted East Devon Local Plan 2013-2031 and guidance contained within the National Planning Policy Framework (2021).

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.

Plans relating to this application:

	Location Plan	29.09.21
P1.0 REV C	Proposed Site Plan	22.09.21
P2.0 REV C	Proposed Floor Plans	22.09.21
P3.0 REV C	Proposed Elevation	22.09.21

List of Background Papers

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