

Ward Tale Vale

Reference 19/2311/FUL

Applicant Mr & Mrs R Persey

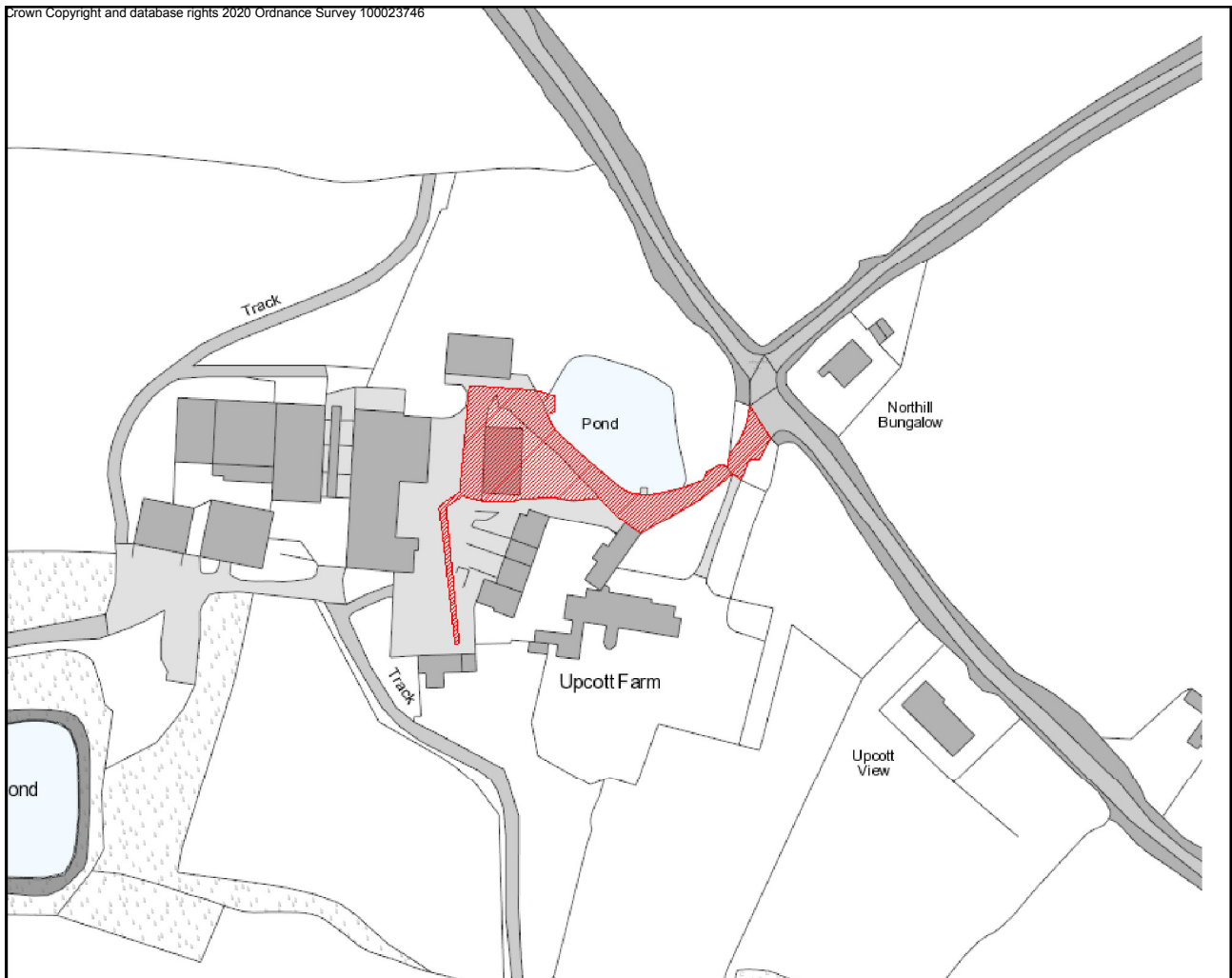
Location Upcott Farm Broadhembury Honiton EX14 3LP

Proposal Construction of detached dwelling, associated works and landscaping following demolition and removal of agricultural building (alternative to residential change of use of agricultural building to dwelling under Class Q - approval reference 19/0239/PDQ).



RECOMMENDATION: Refusal

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		Committee Date: 3rd March 2020	
Tale Vale (Broadhembury)	19/2311/FUL	Target	Date:
		16.12.2019	
Applicant:	Mr & Mrs R Persey		
Location:	Upcott Farm Broadhembury		
Proposal:	Construction of detached dwelling, associated works and landscaping following demolition and removal of agricultural building (alternative to residential change of use of agricultural building to dwelling under Class Q - approval reference 19/0239/PDQ).		

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EXECUTIVE SUMMARY

This application (together with a very similar proposal relating to an adjacent site subject of application ref. 19/2312/FUL) is brought before Members as the officer recommendation differs to the view of the ward member.

The proposal involves the demolition of a former agricultural building, a steel-framed Dutch barn with an attached steel-framed lean-to, at Upcott Farm, between Broadhembury and Kerswell, and its replacement with a four bedroom dwelling. A change of use of additional land around the existing building to form an enlarged curtilage area for the proposed dwelling also forms part of the development.

Prior approval was granted in April 2019 (ref. 19/0239/PDQ) under the relevant provisions of the Town and Country Planning (General Permitted Development) Order for the change of use, and associated operational development, of the building to create a dwelling. The current scheme is therefore, in effect, a substitute proposal for this.

The replacement of an agricultural building with a new build dwelling in an open countryside location outside of any established settlement would ordinarily, at the very least, be likely to be considered contrary to policies intended to restrict new residential development on grounds relating to the non-sustainable location of the site and would therefore deemed to be unacceptable in principle.

However, the application draws on the case of Mansell v. Tonbridge and Malling Borough Council, heard at the Court of Appeal in September 2017, which upheld a previous judgment of the High Court that the availability of permitted

development rights can properly be taken into account as a fallback position where some alternative form of development scheme is then proposed. As such, a fallback development may be a material consideration in relation to such a proposal.

Indeed, the circumstances of the Mansell case were similar to those surrounding this application insofar as they involved a new build residential scheme as a substitute proposal for a barn that could be converted to residential use using permitted development rights, albeit that there was no permission or prior approval in place for such a scheme at the time of the court hearing. In fact, the case in support of the Slade Farm proposal is arguably stronger given that there is an extant prior approval in place for the conversion of the application building that remains capable of being implemented.

In such circumstances therefore, it is not considered that the principle of the development in this case could readily be opposed.

However, it remains the case, as with the majority of proposals, that development should be sympathetic to its context in line with the provisions of Local Plan Policies D1, D8 and Strategy 46, which requires that development be undertaken in a manner that is sympathetic to, and helps conserve and enhance, the quality and distinctiveness of the natural landscape character of the district.

In this regard, officers have consistently sought, in relation to proposals such as this, new dwelling designs that reflect the rural/agricultural context of the site and character of the buildings that they are replacing.

It is also considered that the 'exceptional' nature of such proposals, the fundamental principle which does not accord with the provisions of the Local Plan, justifies such an approach.

In this case however, it is not thought that the overall scale, bulk, form, design and appearance of the proposed dwelling would reflect, or contain any references to, the existing agricultural building that it would replace or to the surrounding agricultural and rural context. The overall effect would therefore be to the detriment of the rural/agricultural character of the surrounding area. Moreover, this would be compounded by the impact arising from the construction of a second, similar dwelling on the adjacent site were permission to be granted for both this application and application 19/2312/FUL and both implemented. It would introduce a pair of houses of largely suburban form, design and appearance, as well as appreciably greater bulk, scale and massing, relative to the agricultural buildings that they would be replacing that, both individually and collectively, would appear out of keeping with their agricultural setting.

It is not accepted that the proposed development would be architecturally and visually more appealing than the previously approved conversion scheme for the existing agricultural building or that it responds better to the surrounding environment as is claimed. By definition, rural building conversion schemes largely retain their form and appearance as agricultural buildings, where handled sensitively, and are for the most part reflective of their rural/agricultural

surroundings. It is not considered in this case that the development would bear any visual relationship to the building that it would replace and would detract from the agricultural character of the surrounding buildings and landscape.

The application is therefore recommended for refusal on the basis of its unacceptable design and visual impact in this rural location.

CONSULTATIONS

Local Consultations

Parish/Town Council

Application No. 19/2311/FUL

R. Persey - Upcott Farm

This planning committee supports these revised plans as more in keeping with the local vernacular and would like all new build as far as possible to be carbon neutral.

SUPPORT (WE UNDERSTAND THIS APPLICATION IS UNDER CONSIDERATION WITH YOU ON MONDAY 16TH DECEMBER AND WOULD LIKE OUR COMMENTS TO BE PUT FORWARD TO THAT COMMITTEE)

Tale Vale - Cllr Philip Skinner

Having viewed both the plans and the site with the applicant plus conversations with yourself in the past, I feel I need to put in to writing my thoughts.

I am going to **SUPPORT** both applications (as above) 2311 & 2312 on the grounds that I do consider they fit in to the already type and style of building on site.

I do believe one could argue their design to be of a modern type but equally arguably one could say they 'blend in' with the existing development.

I do believe it is contentious so I would very much like to hear it debated at development management where members can decide for themselves the merits of the scheme.

I shall hopefully be attending the planning meeting (subject to availability) where I shall show my **SUPPORT**.

Thanking you in anticipation.

Technical Consultations

Environmental Health

I have considered the application and do not anticipate any environmental health concerns.

Other Representations

No third party representations have been submitted in respect of the application proposal.

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 5B (Sustainable Transport)

Strategy 7 (Development in the Countryside)

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)

D3 (Trees and Development Sites)

D8 (Re-use of Rural Buildings Outside of Settlements)

EN5 (Wildlife Habitats and Features)

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

EN22 (Surface Run-Off Implications of New Development)

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

Upcott Farm is located within the open countryside approximately midway between Broadhembury and Kerswell 'as the crow flies'. It is positioned to the west of an unclassified lane that loosely connects the two, which also forms part of the boundary of the designated Blackdown Hills Area of Outstanding Natural Beauty (AONB), and opposite a lane that serves Northill Farm and Broadhembury Barton (both within the AONB). The site being just outside of the AONB.

It comprises an extensive complex of buildings, including the principal farmhouse, a traditional range of stone barns that have been converted to four residential dwellings known collectively as Hembury Court (and previously used as holiday accommodation), ancillary garaging, a pair of green oak-framed buildings formerly used as craft and activities facilities ancillary to the holiday letting units and more modern agricultural buildings.

The majority of the main group of farm/agricultural buildings, although physically and visually part of the overall complex, are now in separate ownership. However, among those that have been retained with Upcott Farm itself are a four bay steel-framed Dutch barn with an attached steel-framed lean-to on its eastern side. It is enclosed with block walls and corrugated metal sheeting on the north, south and east elevations with vertical timber cladding on just under half of the west elevation while it features corrugated metal sheeting on the main roof with asbestos sheeting on the lean-to element.

Planning History

Prior approval was granted in April 2019 (ref. 19/0239/PDQ) for the change of use of the building and associated operational development to form a four bedroom dwelling under the relevant provisions of Class Q of Part 3 of Schedule to the Town and Country Planning (General Permitted Development) Order (GPDO).

The details relating to this approval, which will remain extant until April 2022, also show a combined dining room and kitchen, sitting room, entrance hall and utility room in addition to en-suite facilities for one of the two bedrooms on this level with a large galleried landing alongside the other two bedrooms above. The approved operational development alongside the change of use of the building includes the formation of new window openings on all four elevations with doors also added in both the west and east elevations.

The building is directly south of an open fronted single storey monopitch-roofed steel portal framed farm building that is also the subject of a prior approval for conversion and associated operational development to form a dwelling (ref. 19/0238/PDQ) that was granted at the same time.

Proposed Development

Planning permission is now sought for a revised scheme involving the complete demolition of the barn and the construction in its place of a detached two storey four bedroom dwelling together with the laying out of a larger associated curtilage area amounting to approximately 0.15 hectares in area, incorporating a driveway and 3no parking spaces, than as granted prior approval previously. The proposal also includes the installation of an air source heat pump.

The submitted details show a building of gabled form positioned such that it would occupy around 40% of the footprint area of the barn that it is proposed to replace, this being on part of the northern 'half' of it. The dwelling would incorporate a central 'core' oriented north/south off which a pair of slightly subservient projecting gables would

extend to the west, thereby creating what would be essentially a U-shaped building. The east elevation - which, despite its appearance with considerable glazed areas, would be the 'rear' of the building - would feature a green oak-framed and glazed single storey lean-to addition with a pair of glazed doors providing a rear entrance to the building via the proposed dining room. A second, and very similarly-proportioned and designed, lean-to housing an entrance hall is to be positioned within the projecting gables. As such, although the dwelling is very consciously designed to provide for easterly views of the open countryside (rather than the farm buildings to the west) its main entrance would be in the west elevation which would be altogether of plainer appearance with no openings proposed at all above ground floor level in either of the two gable projections.

However, the main entrance would be proximate to the proposed parking spaces at the end of the driveway serving the development which would be taken off an existing unmade track that skirts a pond to the east. It would then be laid out avoiding the majority of the crown spread of a visually prominent Oak tree in front of the building but extending around the side and 'front' elevations to the parking area. The air source heat pump would be installed immediately alongside these spaces.

Post and rail and overlap board fencing to match that existing alongside the present farm building to the south would extend around the western and northern boundaries of the prospective plot with existing post and rail fencing between the track and the pond being retained in situ.

Aside from the elements referred to above, the design of the proposed dwelling also features a pair of identical gablets over two light first floor windows in the east elevation, which as a whole would be symmetrical in appearance, while the north and south elevations of the subservient projecting gables would incorporate smaller gablets over single light first floor windows. The central parts of both the east and west elevations would be designed to provide the impression of full height glazing set within green oak frames punctuated by the proposed single storey lean-to dining room enlargement and entrance hall referred to above.

The building would measure 15 metres in width and incorporate a maximum roof ridge height of 8.5 metres. Its maximum depth, allowing for the addition of the rear lean-to element, would be 13 metres (the existing building measuring approximately 18.4m wide, 11.6m deep and 6.8m high). External wall finishes would comprise painted smooth or scratch render (colour to be confirmed) with the green oak-framed glazing at both ground and first floor level within the central part of the west and east elevations already referred to; this would be left to weather (albeit added to at ground floor level with the lean-to elements also referred to previously). The roof finish would consist of natural slate with concrete ridge tiles. Aside from the proposed green oak glazing, windows (subject to clarification), doors and fascias would also be formed in timber.

A separate proposal for the replacement of the adjacent monopitch-roofed single storey farm building with a dwelling of very similar form, design and appearance is the subject of an application (ref. 19/2312/FUL) that is running concurrently with this one. A report relating to this application appears elsewhere on the agenda.

ANALYSIS

The main issues that are material to consideration of the proposal are the principle of development, design and visual impact and other matters.

Principle of Development

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. As such, it represents a departure from the provisions of the Local Plan and has been advertised/publicised as such.

However, the applicants' agent has cited case law in support of the scheme in this case with particular regard to the principle of replacing a building eligible under the permitted development rights available for the conversion of agricultural buildings. This was central to the case of *Mansell v. Tonbridge and Malling Borough Council* 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 under (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 subject of the planning applications 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. 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 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 sound.

In the Mansell case there had been no formal proposals submitted for the redevelopment. Conversely, in the case to which this report relates there is a clear fallback position in the form of the prior approval granted earlier this year for the change of use of the building to create a dwelling and the associated operational development. As such, being mindful of its relevance to the current proposal and having regard to the principles that it establishes, notwithstanding the location of the site within the open countryside it is not considered that the fundamental principle of the proposed development can be readily opposed.

Design and Impact upon Character and Appearance of Area

It does however remain the case that the scheme itself is required to have regard to the provisions of Strategy 46 (Landscape Conservation and Enhancement and AONBs) and Policies D1 (Design and Local Distinctiveness) and D8 (Re-use of Rural Buildings Outside of Settlement Boundaries) of the Local Plan insofar as these, among other things, require that development conserves and enhances landscape character and quality, respects the key characteristics and special qualities of the area and exhibits a setting, scale, massing, height, fenestration and materials that relate well to its context.

The Authority has, over the past couple of years, tried to take a consistent approach to proposals involving the construction of new dwellings in place of agricultural buildings with prior approval for conversion using 'Class Q' permitted development rights. It has sought to seek, and/or negotiate revisions, where considered necessary, and so far as is possible and reasonable, to secure schemes where their detailed design reflects that of the agricultural form, bulk, character and appearance, including the palette of external wall and roof finishes used, of the buildings that they are replacing, including their footprint area and general configuration.

It is not accepted, notwithstanding the various findings in the Mansell case, that a previous grant of prior approval for conversion or the potential for conversion, and therefore (by extension) replacement, of a building can, or indeed should, be taken as justification for the 'carte blanche' development of dwellings that pay no regard to any

of these. There remains a policy requirement, as summarised above, for development to be appropriate to the character of its setting. Indeed, securing development that is in keeping with its context remains a key overarching objective of the planning system more generally. Included within this therefore, by definition, is that of the agricultural setting of agricultural buildings with prior approval for conversion (or potential for the same). For example, therefore, it may not necessarily be appropriate or sympathetic to the character or appearance of a countryside site to replace a former agricultural building of traditional form, bulk and general design and, say, modest scale with a significantly larger building of suburban form, design and appearance that might appear entirely alien and sitting on a large plot.

This stance also recognises the 'departure' nature of this type of development in terms of its ordinary non-compliance with established development plan policies in relation to the overarching principle of development restraint within the countryside and therefore considers that proposals should attain an appropriate design standard in relation to the sensitivity of their rural setting.

Whilst Policy H6 (Replacement of Existing Dwellings in the Countryside) of the Local Plan sets out various criteria against which proposals for the construction of replacement dwellings in the countryside should be tested, it is not considered that these are material to proposals such as that subject of the current application since there is no existing permanent habitable dwelling on the site to be replaced. In any event, such proposals will often involve the replacement of more modern and/or less traditional dwellings that themselves do not reflect their countryside setting and where replacement with more modern, and sometimes 'contemporary', schemes is invariably difficult to oppose.

Conversely, in the light of the strongly agricultural character of the setting of the great majority of the buildings to which Class Q permitted development rights apply, coupled with the 'exceptions' nature of proposals for their replacement in the context of development plan policies, it is argued that new dwelling proposals in such circumstances should more strongly reflect this character.

That being said, there is some degree of acknowledgement that some increase in footprint, volume, etc. over that of the building to which a previous prior approval related can be accepted provided that the overall design approach is consistent with the above objectives and does not therefore result in material harm to the character of its setting or the character or appearance of the rural area more generally.

In this case however the scheme involves a dwelling that, notwithstanding the incorporation of certain individual elements of merit in its detailed design, such as a natural slate roof, timber fascias, doors and (subject to clarification) windows and green Oak-framed glazing, is considered to be unduly suburban in terms of its overall form, scale and massing. It is thought that it would be of a form, in particular, that pays no regard to either the agricultural character of its setting or in any way reflects the form of the Dutch barn and lean-to that it would replace. It would not relate well to its context which, despite much development over recent years, still retains this character. Indeed, it is noted that other relatively recent new buildings, such as the single storey green Oak-framed buildings referred to above, have been developed very much with the agricultural setting of the complex in mind.

The introduction of the proposed dwelling, as well as that subject of the separate application relating to the adjacent site to the north, would therefore appear alien to and out of keeping with the agrarian character and appearance of the existing farm complex and its largely open setting.

It is not accepted that the proposed development would be architecturally and visually more appealing than the previously approved conversion scheme for the existing agricultural building or that it responds better to the surrounding environment as is claimed. By definition, rural building conversion schemes largely retain their form and appearance as agricultural buildings, where handled sensitively, and are for the most part reflective of their rural/agricultural surroundings. It is not considered in this case that the development would bear any visual relationship to the building that it would replace and would detract from the agricultural character of the surrounding buildings and landscape. The proposed building being 1.7m taller than the existing barn.

Furthermore, it is not thought that the development would positively enhance the setting of the site to the extent that it could reasonably be considered to weigh in favour of the scheme when balanced against the identified harm to the character and appearance of the area set out above.

In addition, although not itself within the control of the Authority, it is not considered that the proposed addition of further 2 metre high boarded fencing around the northern and western boundaries of the prospective curtilage of the dwelling (similar to that existing along the southern side of the building at present) would contribute towards this objective.

The views expressed by the agents regarding the preference of the development over the approved Class Q conversion and the proposed landscaping and tree planting are noted but not agreed. The details show the planting of two trees, a Silver Birch and a Rowan, in the north western and south western corners of the plot respectively as well as a planted border alongside the northern boundary fencing with the remainder either laid to grass or, in the case of the drive and parking area, permeable stone. Whilst not necessarily themselves unduly objectionable, it is not considered that the perceived harm arising from the collective impact of the dwelling and boundary fencing would be sufficiently mitigated by these measures.

Other Matters

It is intended that foul drainage would be discharged to an existing private sewage treatment plant located to the south of Upcott Farm while surface water drainage would be via a combination of permeable surfaces and soakaways.

Access to the proposed dwelling would be shared with that serving Upcott Farm itself as well as Hembury Court. However, it is not envisaged that the additional vehicle movements that would be generated by the development would materially increase any risk of danger to motorists or pedestrians on the lightly trafficked lane off which the present access is taken.

The application is accompanied by a protected species survey report. Its principal conclusion is that, given the light, open and exposed nature of the existing barn, and the absence of areas where bats could potentially roost unseen, it is considered to be unsuitable for roosting bats. As such, other than normal recommendations relating to the removal of the roof with caution, a precautionary check for nesting birds and the provision of new nesting and roosting opportunities for birds and bats respectively, the report raises no particular matters of concern regarding the impact of the proposed development upon protected species.

CONCLUSION

The proposal involves the demolition of a former agricultural building, a steel-framed Dutch barn with an attached steel-framed lean-to, at Upcott Farm, between Broadhembury and Kerswell, and its replacement with a four bedroom dwelling. A change of use of additional land around the existing building to form an enlarged curtilage area for the proposed dwelling also forms part of the development.

Prior approval was granted in April 2019 (ref. 19/0238/PDQ) under the relevant provisions of the Town and Country Planning (General Permitted Development) Order for the change of use, and associated operational development, of the building to create a dwelling. The current scheme is therefore, in effect, a substitute proposal for this. Case Law has established that such fall-back positions can be used to justify the principle of new dwellings in place of the barn benefitting from consent for conversion and as such the principle of development is acceptable.

However, it remains the case that development should be sympathetic to its context in line with the provisions of Local Plan Policies D1, D8 and Strategy 46, which requires that development be undertaken in a manner that is sympathetic to, and helps conserve and enhance, the quality and distinctiveness of the natural landscape character of the district.

In this case however, it is not thought that the overall scale, bulk, form, design and appearance of the proposed dwelling would reflect, or contain any references to, the existing agricultural building that it would replace. The overall effect would therefore be to the detriment of the rural/agricultural character of the surrounding area. Moreover, this would be compounded by the impact arising from the construction of a second, similar dwelling on the adjacent site were permission to be granted for both this application and application 19/2312/FUL and both implemented.

The application is therefore recommended for refusal on the basis of its unacceptable design and visual impact in this rural location.

RECOMMENDATION

REFUSE for the following reason:

1. The proposed dwelling would be of a form, scale, bulk, massing, design and appearance that would fail to appropriately reflect and respond to the rural agricultural context of its surroundings, including other buildings at Upcott Farm, and the agricultural building that it would replace. It would therefore appear out of keeping with,

and would fail to conserve or enhance, the landscape character and appearance of the area. Furthermore, if permitted, such harm could be exacerbated by the presence of a similar development on the adjacent site to the north that is the subject of a separate application which, together with the proposed dwelling, would result in further cumulative harm to the detriment of the area's character and appearance. As a consequence, the proposal would be contrary to the provisions of Strategy 46 (Landscape Conservation and Enhancement) and Policies D1 (Design and Local Distinctiveness) and D8 (Re-use of Rural Buildings Outside of Settlements) of the adopted East Devon Local Plan 2013 - 2031.

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:

1072/19/LPH1 rev A	Location Plan		21.10.19
1072/19/20 rev C	Proposed Site Plan		21.10.19
1072/19/22 rev A	Proposed Plans	Combined	21.10.19
1072/19/24 rev A	Proposed Block Plan		21.10.19

List of Background Papers

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