

REPORT TO: PLANNING COMMITTEE
Date of Meeting: 29th July, 2024
Report of: City Development Strategic Lead
Title: Appeals Report

Is this a Key Decision? No

Is this an Executive or Council Function? No

1. What is the report about?

1.1 The report provides Members with information on latest decisions received and new appeals since the last report (29/05/2024).

2. Recommendation:

2.1 Members are asked to note the report.

3. Appeal Decisions

3.1 [23/0280/PDCD](#) **Garage-Workshop, Adjacent Pocombe Orchard, Tedburn Road, St Thomas.** *Prior approval for the conversion of the existing workshop (B1/8 use) to a one bed one person dwelling.*
Planning Inspectorate decision issued: 20th February, 2024.

Appeals Dismissed.

A prior approval under Class MA of the General Permitted Development Order, for change of use from an existing workshop (B1/8 use) to a one bed one person dwelling, at Garage-Workshop adjacent Pocombe Orchard, Tedburn Road, has been dismissed.

Class MA sets out a number of requirements, including that the building “*fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval*”. The Council was not satisfied the building had been in continuous B1/8 use. The Inspector agreed the evidence does not go far enough to demonstrate this was a continued use of the building for a B1 purpose over a 2-year period, as required by Class MA.

Notwithstanding this, in order to benefit from the prior approval process, the development must not be contrary to any condition on an existing planning permission. The proposed conversion would be contrary to the condition imposed on planning permission 05/1554/03. Condition 4 clearly restricts such development for no other purpose or use than those within Classes B1(c) or B8. The condition adds more by requiring formal written consent of the local planning authority for the use for any other purpose. The natural and ordinary meaning of these words is unequivocal and precise. Consequently, the words in the condition clearly demonstrate an intention to remove any rights that may be exercised through the General Permitted Development Order.

As the Inspector concluded the proposal is not permitted development, they did not consider the other prior approval matters. This included flood risk, which the Council

also included as a reason for refusal, and received concerns from the Environment Agency during the appeal process.

For the Decision Notice, see:

[Reference: APP/Y1110/W/23/3332294 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.2 **[22/1122/FUL](#) & [22/1123/LBC](#) **25 Monmouth Street, Topsham.** *Installation of six black PV solar panels on rear roof slope.***

Planning Inspectorate decision issued: 16th May, 2024.

Appeals (x 2) Dismissed.

The Inspector assessed that the main issues with this application was whether the proposal would preserve the Grade 2 Listed Building and any features of architectural and/or historic interest. In addition the proposal must be assessed against the need to preserve or enhance the character and appearance of the Topsham Conservation Area.

The Inspector felt that there was a potential for the loss of in-situ historic fabric. Any replacement slates would potentially be from a different quarry with the resulting difference in colour and patina, which would be an obvious change to the characteristics of the roof slope. It was further felt there was a risk of potential harm to the historic fabric of the roof and building caused by the installation of ancillary equipment and wiring. The panels would also cover a large part of the roof which would erode the authenticity of the roof slope.

The appeal was dismissed as the Inspector felt that the proposals would fail to preserve the special interest of the Grade 2 listed dwelling and the wider significance of the Topsham Conservation Area, therefore being contrary to both Local and National Policies on preserving Listed Buildings and Conservation Areas.

For the Decision Notice, see:

[Reference: APP/Y1110/W/23/3319354 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

[Reference: APP/Y1110/Y/23/3319355 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.3 **[22/0756/FUL](#) **Newbery Car Breakers, Redhills.** *Proposed development of six detached, 5-bedroom, residential dwellings and associated access and landscaping.***

Planning Inspectorate decision issued: 3rd June, 2024.

Appeal (& Costs) Dismissed.

The application was appealed due to non-determination. The appeal was lodged following Planning Committee on 24 April 2023, where, following an Officer recommendation for approval, Members were minded to refuse on highway safety grounds and sustainability and it was resolved to defer the application to allow refusal reasons to be reported at the next meeting.

Following the submission of the appeal the application was taken to Committee on 12 June 2023 and the Council's formal position on the application was confirmed by members to be that the application:

- (a) fail to provide pedestrians safe access to and from the site; and,
- (b) fail to provide cyclists safe access to and from the site; and,
- (c) fail to promote sustainable modes of transport, resulting in car-dependent development resulting in an unacceptable risk of conflict between road users, which would harm highway safety.

The application was therefore contrary to paragraphs 110 and 111 of the National Planning Policy Framework (2021), the National Design Guide, Objectives 1, 3 and 5 and Policies CP9 and CP17 of the Exeter Local Development Framework Core Strategy, Policies AP1, H2, T1, T3. DG1 of the Exeter Local Plan First Review 1995-2011, the Sustainable Transport Supplementary Planning Document and the Residential Design Guide Supplementary Planning Document

As the Council had confirmed its position on the scheme the Inspector confirmed that the main issue was whether the site is a sustainable location having regard to the access to sustainable transport and highway safety.

The Inspector visited the site and noted that the road is somewhat narrow and whilst there is sufficient space for vehicles to pass, there is no central dividing line and that the banks on either side of the road are steep with no grass road. They noted that there was not sufficient space for a vehicle to manoeuvre around a pedestrian without going into oncoming traffic, nor the ability for pedestrians to step out of the road. The Highway Authority raised no objection to the scheme, however the Inspector considered that the use of this section of road would give rise to pedestrian conflicts, particularly when it is dark.

In relation to sustainable transport it was agreed that there are bus services and shops within a reasonably accessible distance. However, the Inspector considered that the absence of a pavement would prevent an unattractive alternative to using a private motor vehicle.

The Inspector noted that Redhills is part of the National Cycle Network and therefore safe cycling movements is acceptable, especially as cycling along Redhills would not pose the same level of danger as pedestrians. However, cycling alone would not provide sufficient alternative to private motor vehicle use.

Consideration was given to the Outline planning permission immediately to the north of the site, which will see a footway provided along this stretch of Redhills. However, at the time of assessment no Reserved Matters had been submitted and there is no guarantee that a footway will be delivered. Therefore the Inspector only applied limited weight to this matter.

Previous applications on the site were considered by the Inspector, including a lapsed Outline consent for six dwellings. Whilst the Highway Authority raised no objection to this Outline proposal the Inspector noted that they had already disagreed with their view on highway safety in this appeal and therefore were not persuaded that their previous response would alter their view.

The Inspector confirmed that the Council is now subject to a 4-year housing land supply and that this is currently being met and therefore the presumption in favour of sustainable development set out in NPPF paragraph 11 does not apply. The housing contribution was therefore given moderate weight, however this did not outweigh the adverse impacts of the scheme.

The Inspector concluded that the appeal site is an unsuitable location for new residential development in relation to access to sustainable modes of transport and highway safety. The proposal was considered to create conflict with Objectives 1, 3 and 5 and policies CP9 and CP17 of the Core Strategy and saved policies AP1, H2, T1, T3 and DG1 of the Local Plan. The proposal would also fail to accord with guidance within the Sustainable Transport SPD and the Residential Design Guide SPD.

The Inspector therefore dismissed the appeal for the reasons stated above.

Costs

An application for costs was also submitted but was refused by the Inspector.

The applicant alleged that the Council did not their Scheme of Delegation and the application should have been determined under delegated powers.

The Inspector stated that generally these actions are matters for local government accountability. However, the Inspector still considered the costs claim, noting the follow:

- The Scheme of Delegation does not require an application for consideration at Delegation Briefing to be in writing and this was not disproven in the submitted evidence.
- The Council confirmed that a Member who is both a Ward Member and a Member of the Planning Committee made a request for the application to be considered at Delegation Briefing. It was then considered that due to local concerns the application should be determined by Planning Committee.
- No unreasonable behaviour occurred on the part of the Council or unnecessary or wasted expense.

For the Decision Notice, see:

[Reference: APP/Y1110/W/23/3322198 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.4 **23/1303/FUL** 50 Langaton Lane, Pinhoe, *First floor side extension. Above existing single storey extension to form additional bedroom accommodation. Re-submission of 23/0799/FUL.*

Planning Inspectorate decision issued: 19th June, 2024.

Appeal Dismissed.

The appeal property is a twentieth century semi-detached dwelling, on the corner with Ash Farm Close with the first floor accommodated in the roof space with dormers to the front and rear.

The proposal was for a first floor side extension above the existing ground floor. The proposal would provide an additional two bedrooms and an en-suite and be served by dormers front and back. It was to be 3.3 metres in width, which is more than half the width of the main house, 7.4 metres deep and flush with the front wall of the main house

The application was refused on the grounds that, as a consequence of its siting, scale, massing and design, in that:

- The extension would not be set back from the front elevation of the main dwelling
- The extension would be more than half the width of the main dwelling
- it would appear bulky and disproportionate and not appear as a subservient addition, thereby having a negative impact on the character, and appearance of the host dwelling and the street scene.

The Inspector highlighted the main issues to be the effect of the proposal on the character and appearance of the existing property and on the street scene.

The Inspector concluded that the proposal would lack a degree of subservience as the form of the proposals to the front elevation would result in a further elongation of the building form of the appeal property as it is perceived collectively with the neighbouring property to the east. It would result in an overly dominant building form that would appear at odds with the appeal property's existing characteristics and the immediate surroundings as a result. This would conflict with Policy CP17 of the Core Strategy and Policies DG1 and DG4 of the LP First Review.

For the Decision Notice, see:

[Reference: APP/Y1110/D/24/3341219 \(planninginspectorate.gov.uk\)](#)

- 3.5 **23/1065/FUL** **6 Gladstone Road, St Leonards.** *Change of use from flat and maisonette (Use Class C3) to ground floor flat (Use Class C3) and one small HMO (Use Class C4) on first and second floors*

Planning Inspectorate decision issued: 28th June, 2024.

Appeal Dismissed.

< PLANNING OFFICER'S SUMMARY TO FOLLOW >

For the Decision Notice, see:

[Reference: APP/Y1110/W/23/3333038 \(planninginspectorate.gov.uk\)](#)

- 3.6 **22/1376/FUL** **Land Adjacent to Kinnerton Court, Exwick.** *Construction of three-storey building containing 3no. apartments with associated access, parking and landscaping.*

Planning Inspectorate decision issued: 10th July, 2024.

Appeal Dismissed.

This proposal consisted of a three-storey block on grassed land adjacent to Kinnerton Court, at the junction between Kinnerton Way and Howard Close. The Council had refused consent on numerous grounds - including the loss of open space on the corner of the junction and additional parking at the front of the building harming the overall character and quality of the local townscape, poor quantity and quality of external amenity for existing and future occupiers of the building and, overall, the scheme representing an overdevelopment of the site.

The Inspector did not accept the Council's view that the additional parking at the front of the site would make any significant difference to the townscape given the existing parking that already existed at Kinnerton Court. Similarly, it was not felt that existing or future residents would be harmed by the amount of external space that would be available once the development had been built.

However, the Inspector did agree with the Council that the proposal would "significantly erode the open layout qualities of the entrance to the cul-de-sac. As such, the density of development would not be compatible with the character and quality of the local environment" (Paragraph 7). The Inspector considered that design details, such as the building projecting forward of Kinnerton Court, amplified that harmful effect. For that reason, the appeal was dismissed.

For the record, another appeal for development on this site was dismissed on similar grounds in 2005 (Ref. 04/1596/FUL). The Council drew attention to this decision in its report on this scheme.

For the Decision Notice, see:

[Reference: APP/Y1110/W/24/3339350 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.7 **[22/1598/FUL](#) Dreamland Stables, Church Hill, Pinhoe.** *Conversion of stables to dwelling and associated works including landscaping and parking.*

Planning Inspectorate decision issued: 10th July, 2024.

Appeal Dismissed.

< PLANNING OFFICER'S SUMMARY TO FOLLOW >

For the Decision Notice, see:

[Reference: APP/Y1110/W/23/3331163 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.8 **[22/1610/FUL](#) Land at Corner of Church Hill and Church Lane, Pinhoe.** *Construction of detached single dwelling house with garage, access, landscaping and associated works.*

Planning Inspectorate decision issued: 10th July, 2024.

Appeal Dismissed.

< PLANNING OFFICER'S SUMMARY TO FOLLOW >

For the Decision Notice, see:

[Reference: APP/Y1110/W/24/3340520 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 3.9 **23/1206/FUL** 41 Park Lane, Pinhoe. *RETROSPECTIVE. Flat roof garage with English Cedar cladding.*

Planning Inspectorate decision issued: 12th July, 2024.

Appeal Allowed with Conditions.

< PLANNING OFFICER'S SUMMARY TO FOLLOW >

For the Decision Notice, see:

[Reference: APP/Y1110/D/24/3340186 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

4. New Appeals

- 4.1 **24/0248/FUL** 11 Woodland Road, Pinhoe. *New roof to garage with increase in ridge height and pitch.* **Start Date:** 22nd May, 2024.

For case details, see:

[Reference: APP/Y1110/D/24/3343761 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.2 **23/1245/PMI** 14 Sylvan Road, Pennsylvania. *Permission in principle application for demolition of existing garage and construction of 1no. detached dwelling (C3 Use Class) with associated works.* **Start Date:** 3rd June, 2024.

For case details, see:

[Reference: APP/Y1110/W/24/3344015 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.3 **23/0914/FUL** 1 Higher Riverdale, Exe Street, Topsham. *Conversion and remodelling of storage building to create 2 bed dwelling house with parking, external amenity space including roof terrace and associated works (C3 Use Class).* **Start Date:** 4th June, 2024.

For case details, see:

[Reference: APP/Y1110/W/24/3341923 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.4 **23/0547/FUL** Upper Rooms, 1 Polsloe Road, Pennsylvania. *Replace wood windows with UPVC windows.* **Start Date:** 13th June, 2024.

For case details, see:

[Reference: APP/Y1110/W/23/3332625 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.5 **[23/0652/FUL](#)** 70 Pennsylvania Road, St James's. *Two storey building containing purpose-built student accommodation comprising 6 bedrooms.* **Start Date:** 25th June, 2024.

For case details, see:

[Reference: APP/Y1110/W/24/3344914 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.6 **[23/1159/FUL](#)** 57 Whiteway Drive, Heavitree. *Hip to gable and rear dormer roof extensions (Retrospective Application).* **Start Date:** 16th July, 2024.

For case details, see:

[Reference: APP/Y1110/D/24/3345324 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.7 **[23/0589/FUL](#)** Fernleigh Nurseries, Ludwell Lane, St Loyes. *Conversion of existing nursery buildings/garage to single dwelling.* **Start Date:** 17th July, 2024.

For case details, see:

[Reference: APP/Y1110/W/24/3337298 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

- 4.8 **[23/0691/FUL](#)** 1 Nicholas Road, Heavitree. *Construction of rear dormer and hip to gable roof extension (Retrospective Application).* **Start Date:** 19th July, 2024

For case details, see:

[Reference: APP/Y1110/D/24/3345794 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk)

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Local Government (Access to Information) Act 1985 (as amended)

Background papers used in compiling the report:

Letters, application files and appeal documents referred to in report are available for inspection from: City Development, Civic Centre, Paris Street, Exeter

Contact for enquiries: Democratic Services (Committees) - Tel: 01392 265275