

## AGENDA ITEM - Planning Committee - 12 August 2020

Application No. 19/01862/FULL

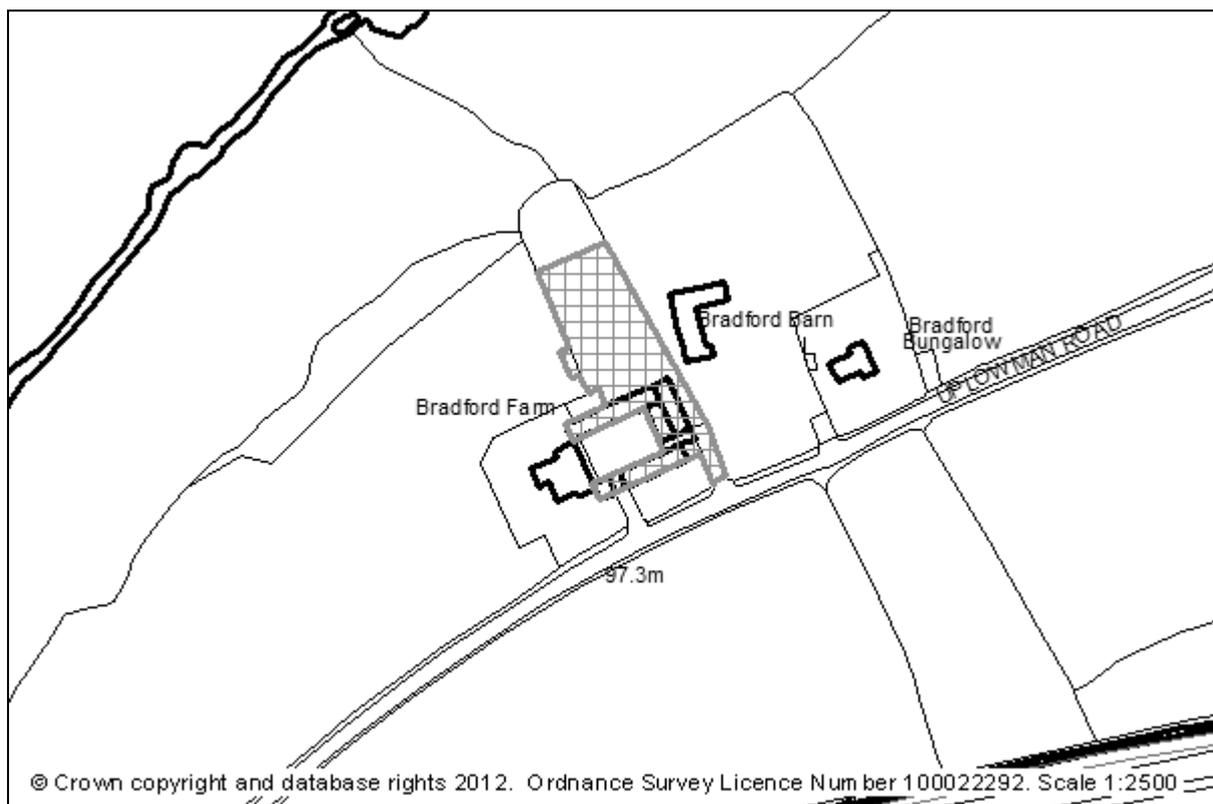
Grid Ref: 299326 : 114323

Applicant: Mr and Mrs A Fields

Location: Land and Buildings at NGR 299326 114323  
Bradford Farm  
Uplowman  
Devon

Proposal: Change of use of farm buildings to mixed B1/B8 use and retention of external works

Date Valid: 12th November 2019



## **REPORT OF THE HEAD OF PLANNING AND REGENERATION**

### **Reason for Report:**

At the Planning Committee meeting on 17<sup>th</sup> June 2020, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.

Since the consideration at the June committee meeting, the Council have been notified that the applicant has submitted an appeal to the Planning Inspectorate for non-determination. As such, the Local Planning Authority are no longer able to formally determine this application. Members are therefore invited to consider this implications report and come to a resolution as to how they would have determined this application. This will give your Officers clear parameters for defending the appeal, unless of course it is resolved that the permission would have been granted.

### **RECOMMENDATION(S)**

Grant planning permission subject to conditions.

### **Relationship to Corporate Plan:**

Economy

- Consider acquiring or creating new business parks to accelerate economic growth, and creating new opportunities for incubator and start-up space

### **Financial Implications:**

An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal in line with the development plan and all other material considerations.

### **Legal Implications:**

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 17<sup>th</sup> June 2020 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal. External legal representation may be required if the appeal proceeds to a public inquiry. The applicant has already indicated that they are in the process of preparing an appeal against non-determination.

### **Risk Assessment:**

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

#### **1.0 INTRODUCTION:**

- 1.1 At the meeting on 17<sup>th</sup> June 2020, Members indicated they were minded to refuse the application and therefore wished to defer the application for consideration of an implications report to consider the proposed reasons for refusal, that of:

- A) The application was not in line with Policy DM20 as Members felt that this was not an existing business.
- B) The application was contrary to Policies DM11 and DM20 as Members felt that it was not a conversion of redundant buildings and there was no evidence of insufficient alternative sites in the area.
- C) Construction of the car park was not in accordance with policy and the conversion would not be policy compliant.
- D) The harmful effect on the amenity to the neighbour due to the dust from the chippings in the car park and the height of the proposed fence which would block out light to the windows.
- E) That condition 8 should include both a silent car park surface and the height of the fence.

## 2.0 THE IMPLICATIONS OF REFUSING THE APPLICATION

- 2.1 In respect of the determination of planning applications, the Planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the development plan unless material indications indicate otherwise. The development plan is therefore the primary consideration and the NPPF acts as non-statutory guidance which should be taken as a material consideration and this is clear from paragraph 2 of the NPPF which states that it is a material consideration in planning decisions.
- 2.2 On 26<sup>th</sup> June 2020, Mid Devon District Council published the Inspector's Report on the Mid Devon Local Plan Review. The Inspector has concluded that the Local Plan is 'sound' subject to a number of main modifications being made. The Mid Devon Local Plan Review, taking account of the Inspector's conclusions, will be recommended for adoption at a meeting of full Council.

Consistent with National Planning Policy Framework paragraph 48, the publication of the Inspector's Reports increases substantially the weight that can be attributed to the Local Plan in decision making. The examination process has now concluded. The Inspector has concluded that the Local Plan is sound (subject to the main modifications which have been recommended) and, as such, there are no longer unresolved objections to the Local Plan Review. As such, substantial weight may now be attached to the policies of the Local Plan when making planning decisions.

The adopted development plan, in technical terms, remains the starting point for planning decision making. The Local Plan Review is however a material consideration to which substantial weight may now be attached.

Given the state of advancement of the Local Plan Review in the process toward adoption, it is considered that, generally, in the context of a planning decision, where there is a conflict between the outcome which arises from the application of policies of the adopted development plan and those of the Local Plan Review, the Local Plan Review will generally outweigh the adopted plan and will prevail. Where there is consistency, then the policies of the Local Plan Review add substantial weight in favour of the outcome which accords with the application of policies of the adopted development plans and those of the Local Plan Review.

### 3.0 **CONSIDERATION OF THE PROPOSED REASONS FOR REFUSAL:**

3.1 With regards to the concerns raised by Members at their previous meeting, your officers would advise as follows:

3.2 A) The application was not in line with Policy DM20 as Members felt that this was not an existing business

3.3 Policy DM20 is relevant in respect to the consideration of applications for *'new-build employment development or the expansion of existing businesses.'* Members are correct in their assertion that this proposal does not relate to the expansion of an existing business. Neither does it relate to new build employment development. The supporting text within policy DM20 does however state clearly that *'policy DM20 refers to new-build developments and expansion of existing businesses. Proposals for conversion of existing buildings to an employment use will be assessed against policy DM11.'* As the proposed development relates to the conversion of an existing building, albeit some of the works are retrospective, it would be incorrect to consider, and refuse, permission against policy DM20. When considering against policy DM11, which is the correct approach, there is no requirement to demonstrate that there are insufficient sites or premises in the immediate area to meet the needs of the proposal.

3.4 With the above in mind, your officers are concerned that raising this matter as a reason for refusal in the defence of the appeal against non-determination, on the basis that the development does not comply with policy DM20 would make use of the wrong policy and would therefore be incorrect procedurally. This could lead to an application for an award of costs should a decision to refuse planning permission on these grounds be appealed.

3.5 In relation to costs applications, the Planning Practice Guidance (Appeals) advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in the context of an application for an award of costs may be either:

- Procedural - relating to the process; or
- Substantive - relating to the issues arising from the merits of the appeal

The above bullet points are considered to be relevant should this application be refused following consideration against policy DM20. An award of costs is therefore considered to be a distinct possibility should an appeal and corresponding costs application be made.

3.6 Following publication of the Inspector's report on the Mid Devon Local Plan Review, and their conclusion that the Local Plan is 'sound' subject to a number of main modifications being made, substantial weight may now be attached to the policies of the Local Plan when making planning decisions. In considering this application, policies DM20 and DM11 would be superseded by Local Plan Review policies DM18 and DM 9 respectively. In this case, the emerging policies are worded in a similar manner to those in the adopted Local Plan with no significant change to the criteria being considered or to the general aims and objectives of these policies. Furthermore it should be noted that an additional line has been added to the supporting text of emerging policy DM9 stating that *'policy DM9 refers to the conversion of existing buildings to a residential, tourism or employment use. Proposals for new-build employment and expansion of existing businesses will be assessed against DM18.'*

*Other policies in the Local Plan will also be applied as appropriate.* This repeats the wording contained within adopted policy DM20 and emerging policy DM18, in respect to the appropriateness of consideration against policy DM20.

- 4.0 B) The application was contrary to Policies DM11 and DM20 as Members felt that it was not a conversion of redundant buildings and there was no evidence of insufficient alternative sites in the area.
- 4.1 It is understood that this area of concern relates specifically to the retention of the shipping container to be used for the storage of bee keeping equipment. Following submission of the application, it was also advised that it was also intended for use for agricultural purposes.
- 4.2 In considering this element of the proposal against policy DM11, it is noted that the building in question comprises a dilapidated shipping container. It is proposed to retain this 'temporary' building on site and clad in timber with a slate roof. This being the case, the building does not strictly comply with policy DM11, which supports the conversion of existing redundant buildings where they are of *'substantial and permanent construction, which positively contributes to the area's rural character.'* It is certainly reasonable to take the view that this building does not comply with that policy criteria. Notwithstanding this, officers do have concerns about the use of this reason for refusal. While the remainder of the site comprises conversion of stone buildings, this relates to a structure that has been brought onto site and is now sought to be retained, with alterations to improve its appearance to be more in keeping than its existing state. It is felt that this should be considered on the basis of provision of a new building rather than the conversion of an existing building. This being the case, it is felt that assessment should be made against policies more relevant to new build development such as policies COR2 and COR 18 of the Core Strategy and DM2 of the Development Management Policies. Amongst other aims, these policies seek to deliver sustainable developments that benefit the local community, sustain the distinctive quality, character and diversity of the District, and support high quality, and well-designed developments. Weight should also be given to the emerging policies within the Local Plan Review, of which policies S1, S9, S14 and DM1 are particularly relevant. These are however similar to those in the adopted Local Plan with no significant change to the criteria being considered or to the general aims and objectives of these policies.
- 4.3 In considering the resulting building following alteration, there are some question marks over its need, however it is relatively small in scale, well related to the existing built development on site, and will be finished with materials appropriate to the rural character of the area. As such, it is not considered that there is a sufficient demonstrable harm associated with this element of the proposal to defend a refusal at appeal.
- 4.4 As advised earlier however, it is your Officer's advice is that policy DM20 is not the correct policy to assess the application against. As such, the requirement to seek alternative sites is not a relevant consideration.
- 4.5 On the basis of the above, Officers are again concerned that there is a possibility that Members may consider a resolution to have refused on the basis of the use of incorrect policies, in which case an award of costs is a distinct possibility should a costs application be made as part of the appeal against non-determination.
- 4.4 Should Members resolve that they would have refused planning permission on the grounds of the building's appearance, and its impact on the design and character of

the area, it is clear that matters such as these are subjective and in assessing the application, Members are perfectly entitled to take a different view to that of the recommending officer. Despite this however, as identified above, and in the Officer's committee report, it is not considered that the proposal would lead to any demonstrable harm that would warrant refusal. With this in mind, your officers do not consider that a reason for refusal in relation to the visual impact of the proposed building, and its failure to respect and relate to the character of the area, would constitute unreasonable behaviour. Notwithstanding this, it is still not considered to be defensible, and as such your officers recommend that a resolution to refuse on these grounds should not be pursued.

5.0 C) Construction of the car park was not in accordance with policy and the conversion would not be policy compliant.

5.1 There appears to be some duplication in this particular reason, with matters of the compliance of the conversion to policy covered in refusal reasons A) and B). Matters relating to the impact on residential amenity as a result of the proposed car park are covered in refusal reason D) below, which leaves concerns in relation to the visual impact of the car park. Relevant policies to assess the proposal against would be COR2, COR18 and DM2, and policies S1, S9, S14 and DM1 of the Local Plan Review.

5.2 As with consideration of the impact of the retained shipping container, in its improved state, it is still the view of your officers that the harm to the rural character of the area is minimal, with no demonstrable harm identified. The parking area is closely linked to the existing building, is contained within a newly landscaped area to the north, and is of similar appearance to the treatment used in the adjacent barn conversion to the east. Again consideration of the visual impact of the parking area is a subjective matter so the risk of costs being awarded is reduced as long as it is demonstrated that this matter has been properly considered by members, and any refusal reason is coherently formed. The Planning Practice Guidance (Appeals) also gives more detailed examples of unreasonable behaviour in unreasonably refusing, or failing to determine planning, or by unreasonably defending appeals, one of which is:

- *Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

5.3 It is not sufficient to say that a proposal would have an unacceptable effect, or simply that it does not comply with policy. It must be clearly and cogently stated what the alleged harmful effects would be in relation to. Putting aside matters of policy discussed earlier, and impact on residential amenity, to be discussed further below, it is not clear what other harm there is sufficient to justify refusal. Officers have suggested visual impact could be a consideration but that this lacks sufficient harm to refuse. Again it is not considered to be defensible, and as such your officers recommend that a resolution to refuse on these grounds should not be pursued.

6.0 D) The harmful effect on the amenity to the neighbour due to the dust from the chippings in the car park and the height of the proposed fence which would block out light to the windows.

6.1 In considering the impact of residential amenity, the neighbouring landowner identified concerns, specifically in respect to noise from the gravel track and parking area, and from headlights of cars using this area, both of which may disturb the occupiers of Bradford Barn.

- 6.2 The Council's Environmental Protection Officer considered the application in respect to these concerns and advised that the level of usage was insufficient to cause disturbance that would represent an unacceptable harm sufficient to represent an unacceptably adverse impact on neighbouring amenity to justify refusing planning permission. At the time of considering the application at Planning Committee, Members were advised that the applicant was willing to replace the gravel with a hard surface or install an acoustic fence. The Environmental Protection Officer had further advised that either of these measures would reduce the impact, however neither was considered to be necessary. In appealing this application against non-determination, the applicant has now withdrawn the offer to provide either of these enhancements and wishes to leave the gravel as it is. On this basis, the advice remains that there will be insufficient harm to reasonably defend an appeal on the grounds of disturbance from noise or light from headlights.
- 6.3 In respect to dust, this does not appear to be an issue that has been raised prior to this point. None of the objections submitted in relation to this application refer to problems resulting from dust, neither is this concern minuted in consideration of the previous application 18/00657/FULL, considered at Planning Committee on 3<sup>rd</sup> October 2018, or the subsequent Enforcement List item considered at Planning Committee of 6<sup>th</sup> March 2019. While the surface of the car park and drive is not properly consolidated, it is still made of up larger pebbles/gravel, rather than a finer surface that may be more prone to generating dust. On this basis, it is not clear what evidence there is to support the assertion that there will be an unacceptable impact from dust. Another example of unreasonable behaviour is given as follows:
- Failure to produce evidence to substantiate each reason for refusal on appeal.
- 6.4 In considering the impact on residential amenity, no concerns have previously been raised in respect to dust, and there is no clear indication that this would be a problem. Furthermore, in respect to the wider issues of disturbance identified above, it is the advice of your Environmental Protection Officer that the development as submitted, including the retention of the existing gravel surface and use of the car park, would not be sufficiently harmful to represent an unacceptable impact on residential amenity.
- 6.5 Moving onto the concerns about the provision of the fence, it should be noted that the applicant benefits from permitted development rights under Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015, which allows the erection of a fence of up to 2 metres in height on this boundary. As such refusal of works that could be carried out under permitted development rights is considered to be unreasonable. Notwithstanding this, the applicant has withdrawn the offer to provide either a fence or consolidated surface. As such, no fence would be erected, removing this particular element of the refusal reason.
- 6.6 In view of the professional advice given by your Environmental Protection Officer and lack of quantifiable contrary evidence, your officers would advise that the suggested reason for refusal on residential amenity grounds, especially as a result of dust, would be very difficult to defend given the professional advice received on this application. An award of costs is therefore considered to be a distinct possibility should a decision be made to defend the appeal on these grounds, and corresponding costs application be made.
- 7.0 E) That condition 8 should include both a silent car park surface and the height of the fence.

- 7.1 This refusal reason, as stated, is somewhat redundant as the offer to provide the identified enhancements has now been withdrawn. As such, members should consider the application on the basis of the existing gravel being retained and no fence being erected. Without these measures, Members have clearly expressed concern about the impact on residential amenity as a result of disturbance from noise and car headlights, in addition to the effect of dust identified above. These issues have however been discussed in detail above, with Members aware that the professional advice of the Council's Environmental Protection Officer is that a refusal reason could not be sustained on these grounds. This view has remained consistent on previous applications, albeit those being of a smaller scale. Nonetheless, the increased intensification of the site associated with this proposal has been properly considered in their assessment.
- 7.2 Should Members resolve that they would have still required one, or indeed both, of these enhancements to be provided by condition, it is important to consider that another example of unreasonable behaviour is:
- Imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations.
- 7.3 In this respect, advice from officers is that such a condition is not necessary as the harm is insufficient to justify refusal. While the applicant was agreeable to providing one of these measures, such a condition could be seen as acceptable, however now that offer has been withdrawn, it is considered appropriate to return to the advice of the Environmental Protection Officer, in that these measures are not considered to be necessary. As such, an Inspector could consider the imposition of a condition requiring one of the enhancements to be unreasonable, as it would be considered unnecessary, particularly noting that the applicant is not agreeable to such a condition. Furthermore, requiring both enhancements, where neither is deemed necessary would increase the risk of such a condition being considered unreasonable.
- 7.4 With this in mind, your Officers are concerned that should Members resolve to defend the appeal on the basis of there being a need to impose a condition requiring both, or now any enhancements, noting the applicant's withdrawal to provide either, an award of costs would be a distinct possibility should a costs application be made.

## 8.0 CONCLUSION

- 8.1 Your Officers are of the opinion that the refusal of this current planning application in relation to all reasons is not defensible and should not be pursued. There is considered to be a real risk of an award of costs in relation to reasons A), B), D) and E), as they currently stand, based on the information available. Similarly, it is considered that there is a real prospect of an award of costs in respect to reason C), unless Members are able to demonstrate that these concerns have been properly debated and cogently articulated in any final resolution to defend the appeal against non-determination.
- 8.2 Should Members resolve that they would have still recommended refusal, and therefore wish to defend the appeal, it is recommended that any refusal is based on more subjective reasons, where it may not be considered unreasonable for Members to come to a different view of the recommending officer and other professional expert advice. As such, it is recommended that any resolution be based solely on the visual impact, and that Members ensure that they can demonstrate that this has been

properly debated and considered. Should Members still have concerns in respect to residential amenity, it is recommended that this is defended on the basis of a clear reason for refusal rather than the need to impose an unreasonable condition.

8.3 Two reasons for refusal are suggested below covering the matters raised, however it is still your Officers advice that neither are considered to be defensible, and there may be a risk of an award of costs, particularly in respect to a refusal against residential amenity, bearing in mind the advice of the Council's Environmental Protection Officer.

1. The proposed retention of the shipping container to be used for the storage of bee-keeping equipment and agricultural use, and the gravelled car park, by reason of their siting, layout, scale and appearance, represent incongruous features on site, which fail to respect or relate to its character and rural context. As such they would have a detrimental impact on the visual amenity of the locality due to its failure to demonstrate a clear understanding of the characteristics of the site, its wider rural context and the surrounding area. The proposal is therefore contrary to policies COR2, COR18 of the Mid Devon Core Strategy (Local Plan Part 1), DM2 of the Local Plan Part 3 (Development Management Policies) policies S1, S9, S14 and DM1 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the aims and objectives of the National Planning Policy Framework.
2. The proposed development would result in unacceptable harm to the residential amenities of the occupiers of the neighbouring property, Bradford Farm, by way of noise disturbance, and light pollution from vehicle headlights, due to the use of the gravel car park, and increased use of the adjoining gravel track, in association with the proposed business use of the site. As such, the proposal is contrary to policies DM2 and DM7 of the Local Plan Part 3 (Development Management Policies), policies DM1 and DM4 of the Mid Devon Local Plan Review 2013-2033: Pre Adoption Draft and the aims and objectives of the National Planning Policy Framework.

**Contact for any more information**

John Millar

**Background Papers**

Application file and previous committee reports

**File Reference**

19/01862/FULL

**Circulation of the Report**

Cllr Graeme Barnell