



Appeal Decisions

Site visit made on 16 October 2018

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2018.

APPEAL A:

Appeal Ref: APP/R3325/W/18/3202355

Land Opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by S Rolli against the decision of South Somerset District Council.
 - The application Ref 17/04236/S73, dated 21 September 2017, was refused by notice dated 1 March 2018.
 - The application sought planning permission for the erection of a new detached dwelling with garaging and parking without complying with a condition attached to planning permission Ref 17/00167/FUL, dated 22 March 2017.
 - The condition in dispute is No. 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: '3590/1a', '3590/16/4', '3590/16/5', '3590/16/6', '3590/16/7', '3590/16/8' and '3590/16/9', received 9th January 2017, and '3590/16/3b', received 21st February 2017.
 - The reason given for the condition is: For the avoidance of doubt as to the development authorised and in the interests of proper planning.
-

APPEAL B:

Appeal Ref: APP/R3325/W/18/3202365

Land Opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by S Rolli against the decision of South Somerset District Council.
 - The application Ref 17/04060/FUL, dated 21 September 2017, was refused by notice dated 1 March 2018.
 - The development proposed is the erection of a new detached dwelling with garaging and parking on plot 1.
-

Decisions

1. **Appeal A:** The appeal is allowed and planning permission is granted for the erection of a new detached dwelling with garaging and parking at Land Opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ in accordance with the application Ref 17/04236/S73, dated 21 September 2017, without compliance with condition number 2 previously imposed on planning permission Ref 17/00167/FUL dated 22 March 2017 and subject to the conditions in the attached Schedule A.

2. **Appeal B:** The appeal is allowed and planning permission is granted for the erection of a new detached dwelling with garaging and parking on plot 1 at Land Opposite Autumn Leaves, Pibsbury, Langport, Somerset TA10 9EJ in accordance with the terms of the application, Ref 17/04060, dated 21 September 2017, subject to the conditions in the attached Schedule B.

Application for costs

3. An application for costs was made by S Rolli against South Somerset District Council. This application is the subject of a separate Decision.

Procedural Matters

4. Planning permission was previously granted for the erection of a single dwelling at the appeal site, known as 'plot 1'. Collectively, the two applications subject to these appeals sought to amend the layout to plot 1 in order to accommodate a second dwelling at the site.
5. The application subject to Appeal A effectively seeks a minor material amendment to the earlier permission to amend the design to a smaller plot and relocate the dwelling, whilst that relating to Appeal B is a stand-alone full application for a new dwelling.
6. I have considered both appeals separately. However, there is considerable commonality in the main issue for appeal A and the first main issue for appeal B. To avoid unnecessary duplication, I have, therefore, prepared a single decision letter for both appeals.
7. The appellant's evidence makes reference to a S106 agreement relating to application 17/00167/FUL tying the dwelling to a holiday cottage. Neither the agreement nor its precise terms are before me. A new permission granted under S73 would not necessarily be bound by the terms of such an agreement and, therefore, I sought clarification as to its relevance from the parties. The appellant responded to confirm that it was not, in actual fact, relevant and I subsequently asked the Council specifically to respond if they disagreed. No response was received and, accordingly, I have concluded that the absence of a fresh S106 agreement is not a reason to withhold planning permission.

Main Issues

8. **Appeal A:** The main issue is the effect of the proposed amended design and siting on the character and appearance of the area.
9. **Appeal B:** The main issues are (i) the effect on the character and appearance of the area; (ii) whether the site is an appropriate location for new housing with particular regard to development plan policies relating to the accessibility of services and facilities; and (iii) whether any material considerations, such as housing land supply in the district indicate otherwise that development should be allowed.

Reasons

Character and appearance

10. Pibsbury is a small settlement of mainly ribbon development stretching along the A372. Travelling through the settlement from Huish Episcopi, most of the development is on the left hand side of the road. Many of the dwellings here

are of an individual design but fairly large and are irregularly spaced. Towards the appeal site, which is at the furthest end of the settlement from Huish Episcopi, is modern development at Level View, where the dwellings are relatively close together.

11. The right hand side of the road, by contrast, is more open. Primarily it is seen as a mix of small fields and paddocks with sporadic groups of buildings interspersed amongst these field systems. The largest of these building groups is around the appeal site which marks the end of the settlement and adjoins open fields.
12. A large dwelling has been built adjoining the appeal site and a further one is under construction next to that. There are gaps between them through which limited views to the countryside beyond are available. The proposed two additional dwellings at the appeal site would result in smaller dwellings than these, with smaller gaps between them. However, whilst a number of dwellings in the settlement have wider frontages, the dwellings would still be detached and not so small as to appear incongruous with Pibsbury when viewed as a whole. The gaps between the dwellings would not be dissimilar to many others on the opposite side of the road.
13. Smaller gaps between buildings would reduce views of the open countryside. However, the character of the right hand side of the road is not based upon views of the countryside between buildings. Rather, as described above, it is of groups of buildings amongst relatively undeveloped fields and paddocks. These paddocks and fields which provide something of a buffer between the main string of dwellings and the wider open moor beyond would be unaffected by the development.
14. Whilst the development would be closer to the site boundaries than if a single dwelling were built, the effect on the overall character and appearance of the area would be very similar. The two-storey dwellings would sit comfortably in scale alongside their recently constructed neighbours and would not appear intrusive in the street scene.
15. The dwellings around the appeal site are clearly visible from within and outside the settlement and are not heavily screened by trees. The dwelling adjoining the open fields on the opposite side of the road presents an exposed gable end to the adjoining field, although it is softened by roadside planting to the front. Whilst space for additional planting to the side of the proposed new dwellings would be limited, there is scope for planting to the front which would provide a similar effect to those existing dwellings opposite. Therefore, whilst the National Planning Policy Framework (the Framework) indicates that well-conceived landscaping schemes should be a constituent part of new development, the limited ability for planting alongside the dwellings would not cause harm to the overall character and appearance of the area in this case.
16. The proposals, taken together, would result in a pair of dwellings and an associated unit of holiday accommodation, that is proposed to be formed by converting a barn on the road frontage, being served by a single point of access. I did not see examples of this shared arrangement elsewhere in Pibsbury. However, whilst the shared access would create a wide expanse of parking and turning to the front of the dwellings, it would be partially screened by the existing building and, therefore, not intrusive in the street scene. Whilst not numerous, there are other examples of extensive parking areas in front of

dwellings and so the character and appearance of the settlement would not be harmed by the proposed parking and access arrangement.

17. I note that some concern has been raised in the representations about the colour of the roof tiles. The plans indicate that natural slate would be used for the roofs of both dwellings. Whilst slate does not appear to be common in the area, the Council has raised no objection to this. From my observations at the site visit, I do not consider that these materials would harm the overall character and appearance of Pibsbury, especially when seen in context with the predominantly stone-faced front elevations.
18. I note suggestions that other planning permissions that have been given in the area were for larger dwellings centrally positioned on their plots. My attention has also been drawn to a nearby refusal of planning permission¹ where the Council considered that the construction of two dwellings would be harmful to the character and appearance of the area. However, I have not been provided with any details of this case and so I can only attach very limited weight to it. In any case, I have determined the appeal based upon the evidence and my own observations at the site visit.
19. Overall, whether the appeals are considered in isolation or together, I find that they would not harm the character and appearance of the area. They would, therefore, comply with those aims of Policies EQ2, SD1 and SS2 of the South Somerset Local Plan 2006-2028 (LP) which seek to ensure that development is of a high quality that promotes local distinctiveness, protects the character and appearance of the area and improves the environmental conditions within the district. It would also comply with those aspects of the Framework that seek to ensure that development is well designed and respects its local context.

Location of development

20. LP Policy SS1 sets out the settlement strategy for the South Somerset District. It indicates that development should be focussed on the strategically significant town of Yeovil with other development permissible in various listed primary and local market towns and rural centres. Elsewhere countryside protection policies should apply, other than in certain exceptions set out in LP Policy SS2.
21. Policy SS2 sets out circumstances under which development is permissible in rural settlements. As a general rule, the policy dictates that development should be strictly controlled and limited (in summary) to the provision of employment opportunities, community facilities, or meeting identified housing needs, particularly for affordable housing. It goes on to say that housing development should only be permitted in rural settlements that have access to two or more key services listed in the supporting text to the policy.
22. Whilst the provision of smaller houses than those previously intended at the site could appeal to a wider demographic and provide additional family housing, there is no substantive evidence that they would meet an identified housing need for the settlement. Importantly, Pibsbury does not contain two or more of the required key services that would make it an appropriate location for housing development. Therefore, whilst the site is fairly close to a public house, church and secondary school in Huish Episcopi and is linked to those

¹ Application number 16/03605/FUL

facilities by a footpath, Policy SS2 does not permit development in this location.

23. The appeal site may be previously developed land and permission has been granted for a single dwelling at the site. However, this does not automatically mean that further residential development should be allowed. Policies SS1 and SS2 aim to guide development in the rural area to the most appropriate locations, fundamentally where future residents would have access to appropriate levels of facilities within the settlement. The circumstances required to demonstrate acceptability in this regard are clearly laid out as described above, and the proposal is in clear conflict with them. Therefore, LP policy indicates that it is not an appropriate location for additional development.

Material considerations and planning balance

24. Whilst the above analysis indicates that the proposals would not have a harmful effect on the character and appearance of the area, the location of the site is not in an appropriate location for residential development when considered against the settlement policies of the development plan. This brings Appeal B into conflict with the development plan when considered as a whole.
25. Against, this, the Council accepts that it cannot currently demonstrate a 5 year supply of deliverable housing land as required by the Framework. This means that the 'tilted balance' outlined in paragraph 11 (d) of the Framework is engaged whereby permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Such an approach is also endorsed by LP Policy SD1 which sets out a similar presumption in favour of sustainable development.
26. The provision of an additional dwelling would contribute to the housing supply and represents a benefit. In respect of the location of development, the Framework seeks to ensure that development is located where services and facilities are easily accessible. However, it also indicates that development in the rural area can help to support services in other nearby settlements.
27. I have already noted that there are a number of facilities in Huish Episcopi and that a footpath links the site to them. Whilst the distance may deter some, it would clearly be possible to make this journey on foot if desired. In this regard, future residents would have choice in their modes of transport. As the main aims of LP Policies SS1 and SS2 are to ensure that services and facilities would be accessible to residents, this reduces the weight that I attach to the conflict with them.
28. In this context, the harm that would arise in terms of accessibility from one additional dwelling at the appeal site would not significantly and demonstrably outweigh the benefits of granting permission when the Framework is considered as a whole. Whether or not Huish Episcopi has already accommodated its forecast number of dwellings set out in the LP, the development, therefore, benefits from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework. I attach this substantial weight, which outweighs the conflict that I found with the development plan.

29. My attention has been drawn to a nearby appeal decision² where, despite the housing land supply situation, the adverse impacts of granting permission were found to significantly and demonstrably outweigh the benefits. However, the Inspector in that case found that there was intervening countryside between Pibsbury and that appeal site and that there was no footpath between the two. The scenario at this site is, therefore, different and as such the other Inspector's findings do not lead me away from my own findings in the present case.

Other matters

30. A badger sett is located at the rear of the site. A mitigation strategy has been prepared to prevent harm to badgers that the Council's ecologist considers to be appropriate. This can be secured by planning condition.

31. My attention has been drawn to a drainage ditch alongside the site that may ultimately drain to the River Yeo. However, despite suggestions to the contrary, there is no substantive evidence that any third party organisations or statutory drainage bodies require access to the ditch for maintenance, nor that construction activities would lead to downstream pollution or affect ecologically sensitive areas. I, therefore, attach limited weight to these matters.

32. It has also been suggested in the representations that the site is not physically large enough to accommodate the development described in the plans. However, there is no substantive evidence that this is the case and I did not see anything at my site visit to suggest that the extent of the site was not properly described in the plans.

33. I note that an oak tree has been previously felled at the site, but this has little to do with the merits of these cases which I have assessed based upon the current situation. Whether or not it would be possible to conceive a larger single house development that also provided a competitive return to the developer, I have nevertheless found the appeal proposals to be acceptable on their individual planning merits.

Conclusions and conditions

34. In respect of Appeal A, I have found that the proposed dwelling, would not harm the character and appearance of the area and complies with the development plan. Therefore, for the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting it for a new one listing the alternative plans. I shall and restate those undisputed conditions that are still subsisting and capable of taking effect.

35. The effect of allowing the appeal is the grant of a new planning permission. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have amended the Council's suggested time limit condition to reflect the date

² APP/R3325/W/17/3168105

of the original planning permission and altered the timing in the landscaping condition as it does not need to be pre-commencement. I have also made slight revisions to the wording in the interests of clarity.

36. The Council has suggested two new conditions. The first relates to the on-going maintenance of the parking area clear from obstruction. Given that the site is smaller and more constrained than under the previous permission, such a condition is reasonable and necessary. The second relates to the need to obtain a badger license from Natural England. A condition requiring approval from an outside organisation does not comply with the tests for conditions outlined in the Framework. However, a condition to secure badger mitigation is necessary to protect wildlife interests and, therefore, having sought the views of the Council and appellant, I have amended the condition accordingly.
37. Turning to Appeal B, whilst the proposal conflicts with the development plan in respect of policies relating to the location of housing, material considerations indicate otherwise that the development should proceed. Therefore, for the reasons given above, I conclude that the appeal should be allowed.
38. A plans condition is required in the interests of certainty. A condition clarifying the external materials and securing a landscaping scheme are also necessary in the interests of protecting the character and appearance of the area. I have made minor revisions to the Council's suggested landscaping condition in the interests of clarity and because it does not need to be a pre-commencement condition. As with Appeal A, conditions are required to safeguard the parking and turning areas in perpetuity and to ensure protection of badgers. Again, I have amended the condition suggested by the Council to ensure compliance with the Framework.

M Bale

INSPECTOR

Schedule A: Conditions in respect of Appeal A.

- 1) The development hereby permitted shall begin not later than 3 years from 22 March 2017.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3645/17/1; 3645/17/2; 3645/17/3; 3645/17/4; 3645/17/5; 3645/17/9.
- 3) The materials to be used in the construction of the external surfaces of the development hereby approved shall be those indicated on the approved plans and detailed within the design and access statement. The materials shall be installed prior to the occupation of the dwelling hereby permitted and shall thereafter be retained as such.
- 4) Prior to the occupation of the dwelling hereby permitted, a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development, as well as details of any changes proposed in existing ground levels; all proposed planting, seeding, turfing or earth moulding shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme shall be carried out in the first planting and seeding season after the development hereby permitted is first brought into use; and if any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 5) The area allocated for parking and turning on the approved plans shall be provided prior to the occupation of the dwelling hereby permitted and shall thereafter be retained as such and shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
- 6) Prior to the commencement of the development hereby permitted, a detailed mitigation strategy for the protection of badgers shall be submitted to and approved by the Local Planning Authority in writing. The strategy shall set out the required works, the timing for such works and measures for their future maintenance. The approved strategy, timings and maintenance measures shall thereafter be strictly adhered to at all times.

Schedule B: Conditions in respect of Appeal B.

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3645/17/1; 3645/17/2a; 3645/17/6; 3645/17/7; 3645/17/8; 3645/17/9.
- 3) The materials to be used in the construction of the external surfaces of the development hereby approved shall be those indicated on the approved plans and detailed within the design and access statement. The materials shall be installed prior to the occupation of the dwelling hereby permitted and shall thereafter be retained as such.
- 4) Prior to the occupation of the dwelling hereby permitted, a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of the development, as well as details of any changes proposed in existing ground levels; all proposed planting, seeding, turfing or earth moulding shall be submitted to and approved in writing by the Local Planning Authority. The approved landscaping scheme shall be carried out in the first planting and seeding season after the development hereby permitted is first brought into use; and if any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 5) The area allocated for parking and turning on the approved plans shall be provided prior to the occupation of the dwelling hereby permitted and shall thereafter be retained as such and shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
- 6) Prior to the commencement of the development hereby permitted, a detailed mitigation strategy for the protection of badgers shall be submitted to and approved by the Local Planning Authority in writing. The strategy shall set out the required works, the timing for such works and measures for their future maintenance. The approved strategy, timings and maintenance measures shall thereafter be strictly adhered to at all times.