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## Appeal Decision

Hearing held on 30 September 2014

Site visit made on 30 September 2014

**by R C Kirby BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2014

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**Appeal Ref: APP/R3325/A/14/2216466**

**Land at 327702 112050, Higher Beetham, Whitestaunton, Chard**

- 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 Mr K Parris against the decision of South Somerset District Council.
  - The application Ref 13/03145/FUL, dated 2 August 2013, was refused by notice dated 27 November 2013.
  - The development proposed is an agricultural building and associated hardstanding.
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### Decision

1. The appeal is allowed and planning permission is granted for an agricultural building and associated hardstanding at land at 327702 112050, Higher Beetham, Whitestaunton, Chard, in accordance with the terms of the application Ref 13/03145/FUL dated 2 August 2013, subject to the 8 conditions in the attached Schedule.

### Application for costs

2. At the Hearing an application for costs was made by Mr K Parris against South Somerset District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The site address described above was agreed between the parties at the Hearing as it more accurately describes the location of the appeal site than that described on the application and appeal forms.
4. At the Hearing, the appellant drew my attention to an error on drawing No 1208/103E which shows the side elevations of the new building. The East Elevation should read West Elevation, and the West Elevation should read East Elevation. No party would be prejudiced by this amendment and accordingly, I have determined the appeal on the basis of the plans submitted with the application and this amendment.

### Main Issues

5. The main issues are:
  - the effect of the proposal on the character and appearance of the Blackdown Hills Area of Outstanding Natural Beauty (AONB), having particular regard to the siting, scale and need for the building, and

- the effect of the use of the building on ground water, having particular regard to the local springs in the area.

## **Reasons**

### *AONB*

6. The appeal site is located within the open countryside, within the Blackdown Hills AONB. The primary purpose of the AONB designation is to conserve and enhance natural beauty, but in pursuing this main purpose account needs to be taken of the needs of agriculture, and the economic and social needs of local communities. An important characteristic of the AONB is its tranquil, rural and relatively remote landscape.
7. Policy EC2 of the South Somerset Local Development Framework (SSLDF) sets out criteria for major development in the AONB. In considering such proposals an assessment of need, alternative sites and mitigation will be considered. At paragraph 115, the National Planning Policy Framework (the Framework) advises that great weight should be given to conserving landscape and scenic beauty in AONB.

### *Need*

8. The appellant's holding in the vicinity of the appeal site is approximately 46 hectares, laid to grass. The land is used predominantly for grazing male cattle and non-dairy heifers and the mowing/conserving of grass to provide winter feed for them. The appellant lives and also farms at Birch Oak Farm, Yarcombe on a full Agricultural Tenancy. This farm is approximately 3 miles from the appeal site and is home to a dairy herd. The facilities at Birch Oak Farm have reached capacity and a letter submitted at the Hearing confirms that the owners of Birch Oak Farm are not prepared to allow further development at the farmstead.
9. The new agricultural building is required to over winter cattle which graze the pastures in the summer, for both bio security and animal welfare reasons. No evidence was submitted at the Hearing that there are any other suitable buildings upon the holding at Higher Beetham which could accommodate cattle. The dutch barn to the north west of the appeal site, is in a dilapidated condition and would be unsuitable for accommodating the number of livestock proposed.
10. The Framework advises that economic growth in rural areas should be supported and in order to support this, the development of agriculture should be promoted. Given the size of the holding at Higher Beetham and the lack of available facilities for overwintering cattle at the appellant's tenanted farm, I consider that there is a functional need for a building to over winter cattle. In reaching this conclusion, I have had regard to the comments of the Landscape Officer and the AONB Partnership in respect of need which are set out in the Officer's report to committee. I also note that support for the proposal was received from the local branch of the NFU.

### *Other sites*

11. Since the refusal of planning permission for a similar building on the appeal site, the appellant has been in discussion with Council officers to explore the possibility of finding an alternative site for the over-wintering facility. Several sites were looked at and were deemed not suitable by Council Officers because

Drainage Path Study suggest that further investigations would be necessary to identify the sub surface drainage paths from the site in order to fully assess the impact of the building on the private water supplies. Given the nature and scale of the building and that there are mechanisms to control run off from both the building and hardstanding I consider that such investigation would be disproportionate to the nature and scale of the proposal. The concerns relating to seepage of waste and effluent from the building could be addressed through the imposition of suitably worded planning conditions relating to drainage, and also through the detailed design of the front and sides of the building.

19. Furthermore, I must have regard to the fact that there is a separate regulatory system that controls private water supplies. Private water supplies are tested by the Council and there are measures that can be taken if the water supply is found to be unsafe. Moreover, the control of waste and drainage provision in relation to agricultural development is controlled and enforced by the Environment Agency. Farmers are required to follow the DEFRA guidance *Protecting our Water, Soil and Air – A Code of Good Practice for Farmers, Growers and Land Managers*. It must be assumed that the pollution control regimes will be properly applied and enforced. In light of the foregoing, I am satisfied that the new building would not pose a significant risk to the quality of local water supplies. There would therefore be no conflict with the objectives of Policy EP9 of the SSLDF in relation to pollution control.

### **Other Matters**

20. Concerns have been raised by local residents that the proposal would result in highway safety issues. An existing field gate would be used to access the site and a new track would be provided to the proposed building. I note from the Officer's report to Committee that the Highway Authority raised no objections to the proposal. Furthermore, highway safety did not form one of the Council's refusal reasons. In the absence of substantive evidence to the contrary, I have no reason to reach a different conclusion to the Highway Authority and Council in this respect.
21. Local residents have raised concern about the effect of the building on their living conditions, particularly as a result of odours from the building. The new building is separated from residential properties by a native hedge and part of a field, and in between are existing agricultural buildings at Higher Beetham Farm. Given these characteristics, I consider that the proposed use of the building would not be harmful to existing living conditions as a result of smells from the building. However, a more intensive agricultural use of the building could occur which may result in harm to living conditions. I consider that this should be controlled to protect the amenities of local residents.
22. The Freshmoor Site of Special Scientific Interest is located to the north east of the appeal site. There are archaeological sites within the vicinity of the appeal site. However, I have no substantive evidence that the proposal would adversely affect either of these features. Accordingly I am only able to attach limited weight to these matters.
23. Local residents have drawn my attention to a legal agreement on the appeal site. This agreement prevents any buildings being constructed on the land unless an application for planning permission is submitted. The appellant has submitted such an application and there is therefore no conflict with the Legal

agreement dated 20 February 1996 relating to the conversion of the barns at Higher Beetham Farm.

### **Conditions**

24. The Council has suggested a number of conditions in writing which it considers would be appropriate were I minded to allow the appeal. The conditions were agreed between the 2 main parties within the Statement of Common Ground. An additional condition relating to the design of the building to prevent the discharge of effluent from it was discussed at the Hearing. The appellant and Council have agreed a form of wording in respect of this. I have considered the suggested conditions below, in accordance with the advice on conditions within the Planning Practice Guidance.
25. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. In the interests of the character and appearance of the area, conditions are necessary to control the materials to be used for the development, the surfacing of the access track, to control external lighting and to ensure that the site is suitably landscaped. In the interests of sustainable development and to protect ground water supplies, a condition relating to the submission of a drainage scheme for surface water and foul water is necessary. In order to prevent the discharge of effluent from the building, a condition requiring details of the design of the feed trough, concrete pad and gates to the building is necessary. A condition preventing the building from being used for intensive livestock rearing is also necessary to ensure that the living conditions of nearby residents is protected.

### **Conclusion**

26. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

*R C Kirby*

INSPECTOR

## **SCHEDULE**

### **CONDITIONS**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan SM2; Drawing Nos 1208/101; 1208/102; 1208/103; 1208/104 and 1208/105.
3. Notwithstanding the details shown on the approved plans, no development shall take place until details relating to the design of the feed trough, concrete pad and gates to the side elevations have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. No development shall take place until samples/details of the materials to be used in the construction of the external surfaces of the building and access track have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
5. No development shall take place until both foul and surface water drainage works have been carried out in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
6. No development shall take place until full details of soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The submitted scheme shall include measures to manage and maintain the existing field boundaries. All planting comprised in the approved details of landscaping shall be carried out in the first planting season following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 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 approval to any variation.
7. No external lighting shall be installed until details of an external lighting scheme have been submitted to and approved in writing by the Local Planning Authority. External lighting shall only be carried out in accordance with the approved scheme.
8. Notwithstanding the provisions of the Town and Country planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the agricultural building shall not be used for the purposes of intensive pig or poultry livestock rearing or the accommodation of livestock other than cattle or sheep.

## **APPEARANCES**

### FOR THE APPELLANT

Mr Kevin Parris	Appellant
Mrs Susan Parris	Appellant's wife
Mr Sheamus Machin	Agent

### FOR THE COUNCIL

Mr Michael Hicks	Planning Officer
Cllr Ros Roderigo	District Councillor
Cllr Sue Osborne	District Councillor

### INTERESTED PARTIES

Mr Andrew Warren	Local resident
Mr John Hunt	A.P.Chant Building Services
Mrs Hilary Cumming	Local resident
Mr Ian Cumming	Local resident
Mrs Mary Herring	Local resident
Miss Marion Edwards	Local resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Copy of letter from Balfours dated 16 September 2014
2. Copy of aerial photograph showing appeal site in relation to Higher Beetham Farm
3. Copy of DEFRA Document 'Protecting our Water, Soil and Air - A Code of Good Agricultural Practice for farmers, growers and land managers'

## **DOCUMENTS SUBMITTED AFTER HEARING**

1. Blackdown Hills Area of Outstanding Natural Beauty – Design Guide for Houses Pp1, 4 and 5
2. Copy of legal agreement dated 20 February 1996 in respect of Higher Beetham Farm
3. Suggested wording of condition 3



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## Costs Decision

Hearing held on 30 September 2014

Site visit made on 30 September 2014

**by R C Kirby BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

**Decision date: 27 October 2014**

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### **Costs application in relation to Appeal Ref: APP/R3325/A/14/2216466 Land at 327702 112050, Higher Beetham, Whitestaunton, Chard**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr K Parris for a full award of costs against South Somerset District Council.
  - The Hearing was in connection with an appeal against the refusal of planning permission for an agricultural building and associated hardstanding.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Mr K Parris**

2. The Planning Committee ignored technical advice relating to possible pollution and advice on the impact of the development on the Area of Outstanding Natural Beauty (AONB), having regard to the social and economic well being of the AONB and the farming community within it.
3. Since a previous planning application was refused, the appellant had gone to extraordinary lengths to meet the concerns raised. The application was refused for a second time on reasons which ignore common sense and basic government advice.
4. The appellant considers that the Council acted unreasonably in refusing the application and unnecessary and wasted expense in preparing for and attending the appeal has been incurred as a result.

### **The response by South Somerset District Council**

5. The Council contend that it is not uncommon for members of the Committee, in this case the Area West Committee, to make a decision, contrary to the Officer recommendation.
6. The Committee was not satisfied on the basis of the information submitted with the application that there was a need for the new building. For example no evidence was submitted to explain why the building could not be provided at Birch Oak Farm. The Committee therefore considered that there was not sufficient justification to allow a building in the AONB where that building impacts on landscape character.

7. In respect of ground water supplies, the Committee considered the report prepared by On Tap and also the appellant's Drainage Path Study. Inaccuracies in the appellant's report concerned the Committee with reference being made to boreholes where none were present. Concern was also expressed that the appellant did not respond to local residents' concerns about possible pollution of the shallow wells from where drinking water is obtained. The Committee therefore considered that the concerns raised about possible pollution had not been satisfactorily addressed and there was therefore uncertainty as to the impact of the livestock building on private water sources.
8. In view of the above, the Council contend that it did not act unreasonably. In reaching its decision the Committee considered all the evidence for and against the proposal. The application was debated at length in a public forum which was well attended by members of the public.

### **Reasons**

9. The Planning Practice Guidance (PPG) was published on 6 March 2014. It advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. The PPG provides examples of circumstances which may lead to an award of costs against a local planning authority. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis and failure to produce evidence to substantiate each reason for refusal on appeal.
11. In respect of the appeal proposal, whilst I reached a different conclusion to the Council in respect of the need for the development and the building's impact of the proposal on the AONB, I am satisfied that the Council produced evidence to substantiate its concern. Furthermore, in terms of need, at the application stage, the Council did not have evidence to demonstrate why the building could not be provided at Birch Oak Farm. It was not until the Hearing that a letter was submitted from the owner of this farm stating that the Estate was not prepared to allow further development at this farmstead.
12. In terms of the building's impact on private water sources, the evidence submitted was not conclusive from either the appellant or interested parties. Whilst I found in favour of the appellant, and considered that the concerns raised could be suitably addressed by planning conditions, the Council did not act unreasonably in refusing the application on this basis. Furthermore, I am satisfied that the Council produced evidence to substantiate its concern.
13. In light of the foregoing, I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG has not been demonstrated.
14. For the reasons given above, I refuse the application for an award of costs.

*R. C Kirby*

INSPECTOR