Appeal Decisions 22 August 2019

Site: Sainsbury Supermarket, Hankridge Way, Taunton, TA1 2LR

Proposal: Installation of concession pod to the front of Sainsburys Supermarket, Hankridge Way Retail Park, Taunton

Application number: APP/D3315/W/19/3224972

Reason for refusal: Appeal Allowed

The Planning Inspectorate

Appeal Decision

Site visit made on 23 July 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/D3315/W/19/3224972

Sainsbury's Supermarket, Hankridge Farm Retail Park, Hankridge Way, Taunton TA1 2LR

- 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 Sainsbury's Supermarkets Ltd against the decision of Somerset West and Taunton Council.
- The application Ref 48/18/0040, dated 6 July 2018, was refused by notice dated 14 January 2019.
- The development proposed is described as proposed Timpson concession pod and associated adverts.

Decision

1. The appeal is allowed and planning permission is granted for proposed Timpson concession pod at Sainsbury's Supermarket, Hankridge Farm Retail Park, Hankridge Way, Taunton TA1 2LR in accordance with the terms of the application, Ref 48/18/0040, dated 6 July 2018, subject to the following conditions:

    1) The development hereby permitted shall begin not later than three years from the date of this permission.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: CHQ.17.12196-PL01, CHQ.17.12196-PL02, CHQ.17.12196-PL03, CHQ.17.12196-PL04, CHQ.17.12196-PL05, CHQ.17.12196-PL06 and CHQ.17.12196-PL07.

    3) The pod hereby permitted shall not be used for purposes other than dry cleaning, key cutting, watch repair, engraving and shoe repair services.

Procedural Matters

2. On 1 April 2019, Taunton Deane Borough Council merged with West Somerset District Council to become a Unitary Authority, Somerset West and Taunton Council. Until such time as they are revoked or replaced, the development plans for the merged local planning authorities remain in place for the area within the unitary authority which they relate to. It is therefore necessary to determine this appeal with reference to the plans produced by the now dissolved borough council.

3. The original application to the Council proposed the installation of advertisements as well as the concession pod. However, the Council's Decision Notice Ref 48/18/0040 relates to the concession pod only and Part E of the appeal form describes the development as proposed Timpson concession pod. Accordingly, I have removed reference to the advertisements in the description of development and have dealt with the appeal on this basis.

4. The National Planning Policy Framework (the Framework) was revised in February 2019. However, as the Framework's policies that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Main Issue

5. The main issue is the effect of the development on the vitality and viability of Taunton town centre, with particular regard to the sequential test.

Reasons

6. Situated outside the front entrance of a Sainsbury's store, the development would create a retail unit providing a main town centre use with an internal floor area of approximately 14.6 square metres. The appeal site is located in an out of centre location.

7. To protect the vitality and viability of town centres, Policies CP3 of the Adopted Taunton Deane Core Strategy 2011 - 2028 (CS) and TC5 of the Taunton Deane Adopted Site Allocations and Development Management Plan (SADMP) and the Framework require proposals for main town centre uses in out of centre locations to be assessed sequentially. In relation to the sequential test, paragraph 87 of the Framework advises that, amongst other aspects, applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored. Planning Practice Guidance (PPG) indicates that the application of the test should be proportionate and appropriate for the given proposal and that flexibility should be demonstrated in considering the suitability of more central sites to accommodate the proposal and in relation to its format and/or scale.[1]

8. The Council identified several sites in Taunton town centre which the appellant's original sequential test did not include but which are considered by the Council to be a suitable scale and format for the proposal. This is based on the Council's position that commercial considerations should not override planning policy, and appeal decision Ref APP/D3315/Q/11/2151808 was submitted as supporting the Council's position that additional sites within the town centre should have been included in the sequential test.

9. Describing the concession pod as being an ancillary facility for a food store, the appellant focused their original sequential test on sites adjacent to food stores.

However, the appellant's appeal statement incorporated the Council's list of sites, which included units not associated with a foodstore, in an updated sequential test. Two other town centre sites, identified by the appellant as becoming vacant since the Council's decision and being potentially suitable with regard to a flexible approach to format and scale, were also considered.

10. Incorporating flexibility, the appellant's updated sequential test considered units with a larger floor area than the proposed concession pod and sites which are not only attached to or associated with a large food store. Proportionate and appropriate for the proposal, the updated test identifies that, irrespective of their proximity to a foodstore, the additional sites are either not available, not available within a reasonable period or are not suitable due to their scale. The Council has not alleged that any of the sites covered in the appellant's original and updated sequential test are available or suitable. Accordingly, the evidence before me indicates that there are no suitable sequentially preferable locations. On this basis, the PPG advises that the sequential test is passed.

[1] PPG, Paragraph: 011 Reference ID: 2b-011-20190722 Revision date: 22 07 2019.

11. The size of the development means that an impact assessment is not required. Given its limited floor area, the concession pod would provide an ancillary facility to customers visiting Sainsbury's and the retail park as opposed to being a destination in its own right. The proposed end user, Timpson, has also indicated that it intends to keep its high-street format store in Taunton town centre as well as operate the concession pod at the appeal site, but does not want another store within the town centre. I did not observe a significant number of vacant units in the town centre on my site visit and the evidence before me does not indicate otherwise. I also have little substantive evidence that the development would impact on investment within a centre and would not be accessible by public transport, cycling or pedestrians. The development would therefore not have a significant effect on the vitality, viability and diversity of Taunton town centre, nor would it undermine the Council's adopted development plan policies or the Council's policy of safeguarding the vitality and viability of Taunton town centre.

12. For the above reasons, I conclude that the development would not harm the vitality and viability of Taunton town centre, with particular regard to the sequential test. I therefore find that the proposal accords with CS Policy CP3 and SADMP Policy TC5. Amongst other aspects, these: promote and enhance town and other centres as the primary location for main town centre uses, require the sequential test and impact assessment for relevant development, and seek to ensure that out-of-centre proposals would not have significant adverse impacts on the vitality, viability and diversity of town and other centres, would not impact on investment in a centre and are accessible. The proposal would also be consistent with the provisions in the Framework in relation to ensuring the vitality of town centres and its three sustainable development objectives.

Other matters

13. The Council has referred to other decisions and its consistency of approach for similar out-of-town development. However, I am unable to draw a comparison to the appeal proposal because the details of those developments and Council decisions are not before me. In any event, each case must be determined on its own merits and I have found in this instance that there are no sequentially

preferable sites for the appeal proposal.

Conclusion and conditions

14. I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. However, I have not included the plan SSP3-6.65m because this plan relates to advertisements. I have also imposed a condition, suggested by the appellant, restricting the activity that can take place within the pod. This condition is necessary in order to ensure that the pod is used for the retail activity purposes applied for and in order to safeguard the vitality and viability of the town centre.

15. For the above reasons, the appeal is allowed.

Tobias Gethin

INSPECTOR

Site: Land to East of Stancombe Farm, Langford Budville

Proposal: Change of Use of building to dwelling on land to the east of Stancombe Farm, Langford Budville

Application number: APP/D3315/C/18/3211485

Reason for refusal: Appeal Dismissed

The Planning Inspectorate

Appeal Decision

Inquiry Held on 25 June 2019 Site visit made on 25 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 August 2019

Appeal Ref: APP/D3315/C/18/3211485

Land to the East of Stancombe Farm, Langford Budville, Wellington Somerset TA21 0SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Jessie Knights against an enforcement notice issued by Taunton Deane Borough Council.
- The enforcement notice was issued on 15 August 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of a building on the Site shown in the approximate position on the attached plan as a rectangle coloured black ("The Building") and the area surrounding the Building as shown on the 3 attached photographs from agricultural use

to residential use.

- The requirements of the notice are (i) Cease the use of the Building for residential purposes; and (ii) Remove from the site all residential and domestic equipment and materials associated with the residential use including the garden pergola seat.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matters

1. As a result of local government reorganisation, from 1 April 2019 the Council is now known as Somerset West and Taunton Council.

2. At the beginning of the Inquiry, I acknowledged that the Council's proof of evidence and supporting documents had been submitted after the 4-week deadline specified in the regulations. However in view of the relatively limited scale of evidence provided and to balance the reasonable expectation of the appellant to have the matter dealt with expediently, a short adjournment was agreed to allow time for the documents provided to be considered.

The appeal on ground (c)

3. The ground (c) appeal is that there has not been a breach of planning control. There is no dispute between the parties that the building subject to the notice is now a residential dwelling and that the only factor that could safeguard its lawful status would be if it was too late to enforce against it due to the passage of time. This, however, is a ground (d) argument. An appeal on ground (c) would be considered independently of the question of immunity periods, and

accordingly the relevant question is *'would the change of use have required planning permission?'.* I have not been provided with any evidence to persuade me that the change of use of the building to residential use would not have required planning permission. The ground (c) appeal therefore fails.

The appeal on ground (d)

4. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In order to succeed on this ground, it would be necessary for the appellant to demonstrate that the use as a separate self- contained residential unit had continued for a period of not less than four years before the notice was issued, that is from 15 August 2014. The Council dispute this ground but say that even if the development could be regarded as immune from action by applying the test of the passage of time, the appellant has taken steps to deliberately conceal the existence of the residential unit. This in turn means that she is unable to rely on the aforementioned immunity period.

5. The site comprises a smallholding, with a small number of animals, including pigs and horses and some sporadic structures including caravans and horseboxes. There is no dispute that the building subject to the notice, a former cricket pavilion, was developed on the site more than four years ago. Consequently, the structure in its own right benefits from immunity from enforcement through the passage of time.

6. The appellant's case is that whilst there has been regular overnight use of the building for lengthy continuous periods for several years, full time residential use of the site by the appellant's father, Mr Peter Brading, has continued for more than four years prior to the enforcement notice being issued.

7. In terms of when residential use of the site can be said to have commenced, the question of when the building could be regarded as first forming a dwellinghouse is clearly a key consideration. In this regard it is established in case law that a key characteristic of a dwelling is its ability to afford to those who use it the facilities required for day to day private domestic existence[1]. Thereafter the continuity of occupation of the building for residential purposes is also a key matter.

8. At the Inquiry and in other evidence provided, various witnesses said that the interior of the building had been gradually improved over time and included the installation of a sink in December 2016. Prior to this time, it would appear that water was supplied from a borehole via a tap attached to the outside of the building and was transferred into the building in a tank. It would also appear that a cooker and hob was fitted around the same time. Beforehand, there had been reliance on a two-ring gas hob, although reference was made, particularly by Mr Brading, to a range of different cooking facilities. Notwithstanding this, the appellant conceded in cross-examination, that prior to December 2016 cooking took place in a caravan elsewhere on the site or outside. This may explain how a family acquaintance, Mr. Wilson, who gave evidence to the Inquiry, was able to recall being provided with a roast meal during a visit some years ago.

[1] *Gravesham Borough Council v Secretary of State for the Environment (1982) 47 P&CR 142*

9. The dwelling is served by a 'long drop' toilet housed in a separate adjacent building. There was general agreement by the appellant and other witnesses that this facility has been in place for some 9 – 10 years.

10. I acknowledge that the notion of precisely what facilities are required for day to day existence will vary from one person to the next; also the fact Mr Brading appears to have adopted a lifestyle based on limited material means and low environmental impact would indicate that he is likely to be more accepting of the most basic amenities than many other people would be.

11. However, in the context of the aforementioned case law, in an extreme case, even if it is possible to survive in the most basic of buildings through the shelter it provides and through importing minimal food and water to allow for sustenance and cleaning, this cannot be enough to make the building in question a dwelling.

12. I acknowledge the various adaptations that have been made on the site in order to accommodate day to day existence. I have taken into consideration that prior to December 2016 the building subject to appeal does not appear to have had an internal water supply and toilet facility and that cooking facilities appear to have been very limited. Whilst this is obviously not the extreme example that I have referred to above, I am not persuaded that, in combination, this arrangement would have allowed for sufficient convenience and flexibility, such that the building could be regarded as a self-contained residential unit, complete with facilities to afford the conditions for day to day existence, in the context of the *Gravesham* case.

13. Furthermore, it also became apparent at the Inquiry that some low-key agricultural use continues to be made of the wider site, in particular the rearing of a small number of pigs. It was indicated that the external toilet facility also serves this use of the site, and would appear to have done since before the permanent dwelling is said to have existed. Despite the fact that a domestic toilet could be located outside the main dwelling, particularly historically, this arrangement in this case would undermine the argument that the toilet forms part of a self-contained residential unit. Notwithstanding this, drawing the above considerations together, I reach the conclusion, on balance, that the appeal building did not become a dwelling until December 2016, following improvements to the kitchen arrangements.

14. In terms of the duration of use of the building for residential purposes, responding to a Planning Contravention Notice (PCN) issued by the Council in February 2017, the appellant stated 'No' when asked if the site has been used as a permanent residential site. A statutory declaration provided by the appellant's father[2], dated 30 April 2018, stated that the site had been occupied permanently for four years and eight months, therefore from September 2013. In evidence to the Inquiry, Mr Brading said, by contrast, that he had occupied the site permanently since 2012 following a serious accident. Jessie Knights when asked at the Inquiry about her father's residential occupation responded four to five years ago. Karen Knights in her proof of evidence replied that Mr Brading had lived there full time for the last five years. These latter responses would suggest full-time occupation commenced in 2014 or 2015.

[2] Associated with a previous application for Certificate of Lawfulness Ref 21/18/0010/LE

15. From the evidence before me and that presented at the Inquiry, the date when full time residential occupation of the site commenced is therefore ambiguous. Despite evidence being sworn and given on oath, when considering the contradictory nature of these statements, I do not find the information provided about when permanent residential occupation commenced to be sufficiently reliable, to conclude on the balance of probability that the Council is out of time to enforce. The supporting statements provided by various third parties, as appended to the appellant's evidence, do not overcome this ambiguity. However, even if the Council was out of time because of the duration of permanent occupation, this would not overcome the concerns I have raised above regarding when the change of use occurred.

16. Furthermore, despite the appellant's denial of concealment, I struggle to reconcile the negative response given to the question in the February 2017 PCN about permanent residential use of the site, with the revelation in sworn evidence made later on that the building has indeed been occupied full time as a dwelling since well before that time in 2017.

17. The question, which asked the appellant about any knowledge they had of permanent residential use of the site by anybody, was straight forward. The suggestion that the appellant was confused by the question or was unaware that her father was occupying land in her ownership and which she was visiting regularly at this time, is simply not compelling.

18. For all that Mr Brading says that the Council and members of the local community were aware of his presence on the site, I am not persuaded that the aforementioned response to the PCN was not an attempt to conceal his full- time residential occupation there.

19. I am mindful that the National Planning Policy Framework states that effective enforcement is important to maintain public confidence in the planning system and the Government's Planning Practice Guidance acknowledges that this relies on accurate information about an alleged breach of planning control. It is commonplace for Councils to rely on evidence given in PCN enquiries to inform whether enforcement action is taken.

20. From the information before me, I am not persuaded that permanent residential use of the site as a self-contained dwelling should have been obvious to the Council simply by visiting the site and talking to people present there. There is nothing in the appellant's or any of the other witnesses' sworn evidence to persuade me that Council officers were specifically informed by them that the appeal building was the subject of continuing permanent residential occupation. Furthermore, had the appellant confirmed residential occupation when asked about this in 2017, it would, in my view, have increased the likelihood of enforcement action being taken at this time.

21. Accordingly I conclude that even if I am wrong with regard to when the building first became a dwelling and that continuous residential use could be demonstrated over the key period, the appellant should not be able to rely on the time periods set out in S 171B of the Act to claim immunity from enforcement, as a result of the concealment of information. The ground (d) appeal fails.

The appeal on ground (f)

22. The ground is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. I acknowledge that the appellant does not dispute the requirement for the residential use of the building to cease, in the event of the appeal on ground (d) being unsuccessful.

23. However it is argued that the requirement to remove residential and domestic equipment and materials is excessive. It seems to me that the existence of such items are part and parcel of facilitating the residential use. The purpose of the notice is clearly to remedy the breach by ceasing the use and restoring the land to its condition before the breach took place. If domestic and residential items were allowed to remain in place, this objective would not be achieved, and it would also make it unreasonably difficult to prevent the resumption of the unauthorised residential use.

24. There is however a further complication in that the appellant argues that without reference to the specific items that should be removed, the requirements are ambiguous, particularly because there are items that have a dual use, not being solely used for residential purposes. The appellant states in closing submissions that for this reason the notice should be regarded as a nullity.

25. However I am not persuaded that there should be any difficulty identifying items that genuinely relate to the residential use of the land, and furthermore distinguishing such items from those on the site that may continue to be needed for welfare purposes only, both in terms of nature and quantity, in connection with any low-key agricultural use of the site. In this context and from the information before me, I am not persuaded that the garden pergola seat should not be removed. I therefore consider the requirements of the notice to be sufficiently precise and not readily open to misinterpretation. The ground (f) appeal fails.

The appeal on ground (g)

26. Despite, a lifestyle preference for living on the site, I am not persuaded, from the evidence provided, that alternative accommodation would not be available to Mr Brading in the form of the property, near Yeovil, undisputed to be occupied by his partner, and with whom he would still appear to be in a relationship.

27. This would overcome the need to seek alternative accommodation from scratch. Mr Brading states that it would be necessary to identify a suitable alternative site to accommodate the animals present there. However, whilst I understand that living close to his animals may be a preference, there is no evidence before me that this would be essential, and that horses and pigs could not remain on the site. I therefore see no justification in terms extending the compliance period to the 12 months requested. However a small extension to 6 months should be sufficient to allow the appellant's father to relocate, whilst making alternative arrangements for any domestic pets present on the site, should this be necessary. The ground (g) appeal succeeds to this limited extent.

28. I recognise that the loss of residential use of the site would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the

Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country which has been held to include the protection of the environment and upholding planning policies. Accordingly, whilst taking into account a variation to the enforcement notice to allow for an extended compliance period, the degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and would not be disproportionate.

Conclusion

29. For the above reasons, I reach the conclusion, as a matter of fact and degree and on the balance of probability, that the dwelling, in a form that would meet the accepted definition of such, has not been in use on the site for a period of more than four years prior to the notice being issued. Accordingly a material change of use of the property did not occur more than four years before the enforcement notice was issued. In any event I have found deliberate concealment, meaning that reliance cannot be placed on the immunity period in question.

30. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice with a variation.

Formal Decision

31. It is directed that the enforcement notice be varied by deleting the words "4 months" in paragraphs 6(i) and 6(ii) and substituting the words "6 months" in both cases instead.

32. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Roy Merrett

INSPECTOR

Site: Land at West Street, Watchet, Somerset, TA23 0BQ

Proposal: Erection of dwelling

Application number: APP/H3320/W/19/3225541

Reason for refusal: Appeal Dismissed

Appeal Decision

Site visit made on 23 July 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2019

Appeal Ref: APP/H3320/W/19/3225541

Land at West Street, Watchet, Somerset TA23 0BQ

- 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 The Really Practical Design Co Ltd against the decision of Somerset West and Taunton Council.
- The application Ref 3/37/18/019, dated 27 June 2018, was refused by notice dated 7 March 2019.
- The development proposed is described as construction of a house on land at West Street, Watchet.

Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 April 2019, West Somerset District Council merged with Taunton Deane Borough Council to become a Unitary Authority, Somerset West and Taunton Council. Until such time as they are revoked or replaced, the development plans for the merged local planning authorities remain in place for the area within the unitary authority which they relate to. It is therefore necessary to determine this appeal with reference to the plans produced by the now dissolved district council.

Main Issue

3. The main issue is whether the proposed development is acceptable in the absence of on-site parking.

Reasons

4. Policy T/8 of the West Somerset District Local Plan 2006 (WSDLP) requires, amongst other aspects, the provision of car parking at residential sites in accordance with Appendix 4, Table 4 unless it can be demonstrated that shared car parking, public transport or other means can reduce the need for visitor parking. The Council indicates that Appendix 4 sets out that two car spaces are required for a dwelling. However, the Somerset County Parking Strategy has superseded this figure, instead requiring a maximum optimum of 2.5 car parking spaces for three bedroom dwellings, such as the appeal proposal.

5. There has been a number of planning applications for residential accommodation at the appeal site, and outline permission was granted at appeal (Ref APP/H3320/A/14/2225365) in 2015 for a similar development to

this appeal proposal. Although that permission has now lapsed, it is a material consideration to which I give significant weight.

6. The absence of on-site parking was a main issue in the previous appeal and the same parking standard and policy remain in place now. The Inspector for that appeal found that the specific local circumstances at that time – including to the site's location relative to shops and services and the availability of nearby parking provision – justified a deviation from the Council's parking standards and rendered that scheme acceptable. However, the evidence before me indicates that there has been a significant change in local circumstances since that appeal decision, with the nearby West Street car park, which provides parking for residents and is controlled by a barrier, being full and no longer having spaces available. At the time of the Council's decision on this appeal proposal, the Clerk to Watchet Town Council indicated that there was a waiting list of 11 applicants for spaces in the West Street car park.

7. I do not have the full details of the previous appeal proposal, and I am not certain what evidence was submitted with that appeal, including in relation to the services and facilities in Watchet and public bus services at that time. I recognise that various aspects may also not have changed, such as the characteristics of nearby footways. However, representations from neighbours indicate that there have been some changes to services and facilities in Watchet since the previous appeal decision, such as closure of the bank, and there is no longer the passing 'Webber' bus service. I have little evidence on the level, frequency and destinations of bus services in the area now, and I did not observe any bus stops in the vicinity of the site at the time of my site visit. The evidence before me therefore points to there now being fewer facilities and services available to occupiers of this appeal proposal and their visitors than compared with when the previous appeal was determined. I note that the stream train service at Watchet also only runs in the summer and autumn. Accordingly, it seems to me that the train is geared more towards tourism and does not provide residents and their visitors with a viable, accessible alternative to the car.

8. It has been put to me that the site is in a sustainable location, existing residents in nearby properties use the public footpath to access their properties, future occupiers of the development could live quite happily without a car, the dwelling would only be bought or rented by someone who is happy with the lack of on-site parking and no one will be forced to live there. Albeit involving relatively narrow, intermittent footways and limited street lighting, I recognise that the site is also a short walk from the various services and facilities in Watchet, and that this would serve to reduce the need for a car. Future occupiers could also choose not to have a car, and cycle parking would be provided in accordance with part iii of WSDLP Policy T/8.

9. Be that as it may, I am mindful of the fewer services, facilities and public transport options that Watchet now has compared with when the previous appeal was determined. The local topography, the relatively narrow highway and the steps near the site indicate that it would not be particularly conducive for occupiers and visitors to access the site by cycle. It seems reasonable to me to expect that a three-bedroom dwelling could also accommodate a family. Accordingly, although some households do cope without a car, it seems to me that future occupiers would be likely to have at least one car and that visitors,

given the cycling and public transport options, would also often be likely to travel by car.

10. I acknowledge that occupiers of the development might be able to obtain a space in the West Street resident car park in the future. However, I have little substantive evidence that future occupiers would actually be able to do so, and in any event the number of people on the waiting list could mean a lengthy wait for future occupiers of the development to obtain a space there. Consequently, the development would be likely to result in an increase in demand for the limited number of on-street parking spaces on West Street, which I observed on my site visit were well-used and surrounded by a number of properties with generally limited off-street parking provision. Future occupiers and their visitors would therefore be likely to need to frequently park further afield, such as in Market Street car park. However, that car park is some distance away and would involve walking further along a relatively narrow, sloping highway, on intermittent footways with limited street lighting.

11. The Council has not specifically detailed what harm they see arising from the development. Nevertheless, it is clear to me that the lack of on-site parking and lack of available space in the nearby resident-only car park would be likely to result in increased vehicle manoeuvres on the relatively narrow highway as future occupiers and their visitors search for a space to park. This could hinder the free flow of vehicles and create a hazard for other highway users. It is likely that the limited on-street parking available near the site would mean that occupiers and their visitors would also often have to park further away from the site. They would therefore have to regularly negotiate the intermittent and relatively narrow footways, which are not particularly safe.

12. Part ii of Policy T/8 allows for a contribution towards improving deficiencies in public transport, cycleways or pedestrian facilities associated with the development where a reduced level of car parking is appropriate. The Council has not indicated what such a contribution may entail and the appellant has not provided a contribution. However, for the reasons above and based on the evidence before me, a contribution would not be acceptable in any event because a reduced level of parking, involving no on-site spaces, would not be appropriate on the basis that it has not been demonstrated that shared car parking, public transport or other means can reduce the need for visitor parking. Consequently, a condition securing such a contribution would not comply with policy nor overcome the harm. I therefore conclude that the development would not be acceptable in the absence of on-site parking and find that the proposal would conflict with WSDLP Policy T/8. The proposal would also be inconsistent with the provisions of the National Planning Policy Framework (2019) relating to sustainable transport, access and highway safety, including as set out in paragraphs 108 and 109.

Other matters

13. I acknowledge the appellant's frustration regarding the time taken by the Council to determine their planning application for two dwellings at the site and that the lapsing of the 2015 outline permission has financial implications for them. However, these issues are not determinative as to the acceptability of this appeal proposal. On the evidence before me and as set out above, there are also clear differences in the circumstances between when the appeal

decision was made for the previous scheme and now. I have therefore considered the proposal on its merits, based on the evidence before me.

14. The Council has not objected to the design, layout or size of the development and an ecology survey has been submitted with the appeal. The development would also provide a new house, which is needed. Be that as it may, these matters do not outweigh the harm I have identified nor provide justification for development that conflicts with the development plan.

15. I recognise that the previous appeal decision found that a dwelling on the site made effective use of land and that the Council has indicated that the site formerly accommodated a number of dwellings. However, I have limited details of this and observed on my site visit that the site does not currently have any dwellings on it. I note that the previous Inspector found that the site was also in a sustainable location based on the circumstances at that time. However, for the reasons above and based on the current circumstances and information before me, I find that this appeal proposal would conflict with parts of the social roles set out in paragraph 8 of the Framework and does not therefore constitute sustainable development.

16. Neighbours have raised a number of other concerns in relation to the development, such as its effect on neighbours' living conditions, construction management and the need for electric car charging. However, given my conclusions on the main issue and that the appeal is dismissed, there is no need for me to address these in further detail.

Conclusion

17. For the above reasons, the appeal is dismissed.

Tobias Gethin
INSPECTOR

Site: Der Bauernhof, Jews Lane, Wiveliscombe, Taunton, TA4 2BU

Proposal: Erection of temporary workers accommodation at Der Bauernhof, Jews Lane, Wiveliscombe

Application number: APP/D3315/D/19/3223097

Reason for refusal: Appeal Dismissed

The Planning Inspectorate

Appeal Decision

Hearing Held on 9 July 2019
Site visit made on 9 July 2019

by S Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2019

Appeal Ref: APP/D3315/W/19/3223097

Der Bauernhof, Jews Lane, Wiveliscombe, Taunton, Somerset TA4 2BU

- 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 Martin Ahern against the decision of Somerset West and Taunton Council.
- The application Ref 49/18/0008, dated 19 January 2018, was refused by notice dated 24 October 2018.
- The development proposed is the erection of temporary farm workers accommodation.

Decision

1. The appeal is dismissed.

Procedural Matter

2. It was agreed by both parties that the description of development should be as included in both the submitted Appeal Form and the Council's Decision Notice, rather than the longer version on the Application Form.

Main Issue

3. Whether, having regard to national planning policy that seeks to avoid isolated new homes in the countryside and inaccessible rural locations, there is an essential need for a rural worker to live at or near their place of work.

Reasons

4. The site is within the countryside, near the village of Maundown. The site comprises a relatively small farm with one large barn and also a collection of smaller sheds, polytunnels and two caravans. The appellant stated in the Hearing that at times he did sleep overnight in the caravan when necessary due to late evenings followed by early starts working on the farm, for example.

5. There are livestock on the farm including goats, pigs, sheep, turkeys and chickens. The proposed cabin style temporary dwelling is explained by the appellant as mainly being necessary due to the time needed to feed the new young goats that come to the farm. There is also time needed for other duties at the farm, such as mucking out, feeding and looking after the other animals, keeping the site secured (including from foxes) and the growing of crops (through hydroponic techniques). However, as clarified at the Hearing, the main justification put forward for a temporary dwelling at the farm is the

feeding of goats, with no substantive evidence provided of how the other duties on the farm would necessitate someone living on site.

6. Paragraph 79 of the National Planning Policy Framework (the Framework) advises that the development of isolated homes in the countryside should be avoided unless certain circumstances apply. This includes where there is "an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside." The site of the proposed cabin is not within a settlement and would appear physically separate from the nearest village of Maundown.

7. Within the Taunton Dean Adopted Site Allocations and Development Management Plan 2016 (SADMP) policy H1b is particularly relevant. Applications for temporary dwellings for rural workers are assessed under policy H1b, which supports new dwellings that are essential to support a new agricultural or other rural-based dwelling, subject to criteria, for a temporary period of usually three years. The appellant has made clear that they would accept a condition that the dwelling be retained for a temporary period.

8. There is clearly a firm intention to develop the business, with the appellant already running the business from the farm with livestock present on site for over three years. The appellant has regular suppliers and also buyers of the products, including the goats for meat. However, the issue in dispute is whether there is a functional need for a dwelling at the site.

9. From the information submitted by the appellant, the feeding of the young goats using milk bottles, for approximately the first several weeks they are at the farm, is time consuming and labour intensive. Four 15-minute feeds a day for each goat, which means that last year when there were 22 young goats on the farm, it took approximately 22 man-hours to feed them per day.

10. However, for much of the year in 2018 there was considerably fewer young goats on the farm to feed. There were only 14 weeks of 2018 that there were over 10 goats to feed. The appellant stated in the hearing that future years would probably have a similar number of young goats to feed, although this is variable. Nonetheless, in terms of evidence, the time taken for goat feeding is primarily based on the 2018 figures submitted.

11. With the weeks when there would be a significant number of goats that needed bottle feeding, the appellant at the Hearing confirms that both Mr Ahern and his partner would be generally present to share the workload with shift work. On this basis, in approximate terms, the feeding may be done over the day without unsociable hour work, even when there are over 20 kid goats on the farm, for example. Whilst this is still a long day, especially if other farm chores are included, this could be achieved without having to have accommodation at the farm.

12. There is evidence of some very long days working at the farm, but there is no substantive evidence of the work done on these particular days and how frequently they occur. Also, as explained above, for most of the year there would be less than approximately 10 man-hours per day needed to feed the kid-goats, which is the primary justification given for the temporary dwelling.

13. There has been evidence given of sick animals needing treatment, particularly goats at the farm. Whilst I acknowledge that it would be beneficial to be on site

if such incidents occur, there is no substantive evidence provided of how frequently such issues arise, with it suggested at the Hearing that the appellant's gained experience has reduced such incidents significantly. This would have been achieved without having someone live at the site.

Furthermore, there could be other methods of observing remotely for such I ncidents which do not appear to be fully explored.

14. The appellant states that he lives about two miles from the farm, in a rented cottage. This is not a long distance and the drive between the cottage and site would take no significant amount of time. As a rental cottage, their occupancy is not fully secure, but they have been there for a number of years and there is no evidence that they would have to move out any time soon.

15. On this matter, the larger settlement of Wiveliscombe and other smaller settlements are within relatively close proximity to the site, where there is the potential of other properties that the appellant and his partner could live in. I recognise that there may be restrictions on pets in some other rental properties, which could also be expensive, but currently there is no need for the appellant to move properties or suggestion that this may occur in the near future.

16. The distance and frequent trips by private vehicle to and from the site would add some traffic to the road network and some pollution. However, the number of trips stated by the appellant would not be a substantial amount and would be over a relatively short distance. There is no detailed evidence that this would lead to significant levels of pollution. Furthermore, moving to the site away from a settlement could also lead to trips being necessary over longer distances to other shops and services needed, which would also have some pollution impact, albeit probably slight.

17. The temporary dwelling would not be a long distance from Maundown, but this appears to be a small village with few shops and services. The temporary dwelling would also be clearly physically separate from this village.

18. The appellant has outlined the investment of time and money into the farm, which is important to their livelihood. However, this has been achieved so far without living at the site and there is no sufficient evidence before me to demonstrate that a dwelling is needed to significantly improve the farm's potential as a business.

19. Both the Framework and policy H1b state that a dwelling would only be appropriate if the need was essential. Whilst I understand the convenience of living at the site, I am not satisfied that there is an essential need for a rural worker to live on site. Furthermore, any functional need can be addressed by existing accommodation in the local area, as is currently the case. The proposal is therefore contrary to policy H1b of the Taunton Dean Site Allocations and Development Management Plan 2016. This policy, amongst other things, supports temporary rural worker dwellings where a functional need can be demonstrated and that any need cannot be fulfilled by another existing dwelling in the local area.

20. Furthermore, in this regard, the proposal does not meet with the Framework requirements as there is not an essential need for a rural worker at this location to live permanently on site in this rural location.

Other Matters

21. The appellant has stated the length of time taken for a decision by the Council on the planning application. I have had regard to the appellants' concerns regarding communication from the Council and the time taken for determination with the planning application process, but that does not affect my assessment of the planning merits of the scheme before me.

Conclusion

22. For the reasons given above and having regard to all other matters raised, the appeal is dismissed.

S. Rennie

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Martin Ahern	Appellant

FOR THE COUNCIL:

Mr Ben Gilpin	Planning Contractor
Ms E Ford	Planning Officer

INTERESTED PARTIES:

None Present

DOCUMENTS SUBMITTED WITH THE HEARING

- Copy of Der Bauernhof 'blog' website pages (www.derbauernhof.co.uk)
- 2 x photographs of hydroponics

Site: Chilcombe House, 30 Trendle Lane, Bicknoller, Taunton, TA4 4EG

Proposal: Outline application for the erection of one detached dwelling and double garage with all matters reserved except for access

Application number: APP/H3320/W/19/3224392

Reason for refusal: Appeal Dismissed

3/01/3/01

f The Planning Inspectorate

Appeal Decision

Site visit made on 23 July 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2019

Appeal Ref: APP/H3320/W/19/3224392

Chilcombe House, 30 Trendle Lane, Bicknoller TA4 4EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs Bridgland against the decision of Somerset West and Taunton Council.
- The application Ref 3/01/18/009, dated 19 July 2018, was refused by notice dated 30 November 2018.
- The development proposed is for the formation of access and erection of one detached dwellinghouse and double garage.

Decision

1. The appeal is dismissed.

Procedural Matters

2. On 1 April 2019, West Somerset District Council merged with Taunton Deane Borough Council to become a Unitary Authority, Somerset West and Taunton Council. Until such time as they are revoked or replaced, the development plans for the merged local planning authorities remain in place for the area within the unitary authority which they relate to. It is therefore necessary to determine this appeal with reference to the plans produced by the now dissolved district council.

3. The appeal is made in outline with all matters except access reserved for future consideration. I have therefore considered the appeal on this basis and assessed the drawings as merely illustrative insofar as they relate to the reserved matters.

4. The appellants submitted an amended plan with the appeal, showing amongst other aspects a revised location for the vehicular access and visibility splays. In

considering whether to accept the amended details, I have had regard to the 'Wheatcroft Principles', including in relation to whether the changes materially alter the nature of an application and whether the amendments indicate that it is in substance different from that for which the application was made. I am also mindful that accepting amendments at appeal stage could potentially deprive parties of the opportunity to comment on the amendments and therefore prejudice their interests.

5. The appellants assert that the changes shown in the amended plan are not materially different to that which was originally applied for, that the repositioning of the access should be allowed as it does not materially alter the nature of the application or cause prejudice to the adjoining property, and that any interested party has had the opportunity to comment on the amendments because the plan was amended before the appeal was submitted. The appellants also informally consulted the Highway Authority. Be that as it may, this appeal relates to the appeal proposal originally determined by the Council, and I cannot be certain that accepting amendments at appeal stage would not deprive parties of the opportunity to comment on the amendments. Taking the amended plans into account could therefore prejudice other parties' interests. I note that a neighbour has also raised concerns about both the submission of the amended plan and about the substance of the amendments.

6. Responding to the appellants' informal consultation on their intended amendments, the Highway Authority indicated that they would be unlikely to object in principle based on the information received. However, the Highway Authority's response to the appellants clearly stated that their advice was informal, their formal comments would need to go through the official planning process and their advice can either be acceptable to or rejected by the local planning authority. Furthermore, I do not know exactly what details the Highway Authority have seen and although the Council have not objected to the amended plan during the course of the appeal, neither have they indicated their explicit support or agreement of it. The submitted landscape and arboriculture assessments may also not sufficiently reflect the amended development and could therefore need to be revised in order to ensure an accurate assessment of the effects of the amended development.

7. The Planning Inspectorate's Procedural Guide (Planning Appeals – England, 2018) sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Consequently, and for the above reasons, I have determined the appeal on the basis of the proposal determined by the Council and have not taken into account the amended plan.

8. The National Planning Policy Framework (the Framework) was revised in February 2019. However, as the Framework's policies that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Main Issue

9. The main issue is the effect on the character and appearance of the surrounding area and the Quantock Hills Area of Outstanding Natural Beauty.

Reasons

10. The appeal site is located within the western part of the Quantock Area of Outstanding Natural Beauty (AONB). Forming part of a residential garden containing various trees and soft landscaping, the site is located between two detached dwellings and bounded by Trendle Lane and Chilcombe Lane. Both roads are relatively narrow and have large banks and well established hedgerows with some trees. Bounding and screening the site, the hedges are a common, prominent landscape feature of the locality and contribute positively to the character and appearance of the surrounding area and the landscape and scenic beauty of the AONB. Bicknoller is relatively built up with numerous houses and driveways which mostly lead onto Trendle Lane. However, the area surrounding the site is less developed, involves greater spacing between built form and has an increasingly rural character and less developed appearance, with mature hedgerows predominating. I observed on my site visit that there are also relatively few access ways through hedgerows in the vicinity of the site, particularly in the case of Chilcombe Lane.

11. The appeal proposal would introduce a new detached dwelling and garage in between Chilcombe House and Beacon Hill House. A new pedestrian access onto Trendle Lane and a wider vehicular access with associated visibility splays onto Chilcombe Lane would also be created. This would involve some loss of existing established hedgerows on both Lanes and some trees and soft landscaping within the site. However, a replacement stone wall and landscaping planting involving native species would be provided behind the visibility splays either side of the vehicular access, and landscaping and replacement trees within the site would also be provided

12. As layout, scale, landscaping and appearance are reserved matters, only limited details are available at this time. However, it is clear that the main body of the site and the dwelling and garage would remain relatively well screened by existing and replacement planting, and the pedestrian access would be relatively narrow. The new dwelling, garage and pedestrian access would therefore not be particularly noticeable except from close by and in glimpsed views. Their effect on the character and appearance of the surrounding area would therefore be limited. Situated between existing built form and within a reasonable sized plot providing some space to adjoining buildings, a new dwelling and garage on the site would also not appear particularly out of place in relation to the surrounding development pattern. Full details as to appearance, layout, scale and landscaping matters would also be covered at reserved matters stage.

13. However, the evidence before me indicates that the change on Chilcombe Lane would be significant, with a relatively long section of mature, prominent hedgerow being removed and the replacement hedge being set-back within the site to provide sufficient visibility for vehicular access. This set-back would create a noticeably wider section of highway along the site frontage on Chilcombe Lane. This would appear significant in the context of the narrow Lane. The set-back replacement hedge would also combine with the visibility splays at Beacon Hill

House. This would result in a considerable stretch of uncharacteristically set-back hedgerow and wider Lane, and would create a more open, artificial environment which would appear as an incongruous feature that would harm the character of the surrounding area.

14. The area is relatively quiet and may not include significant numbers of vehicles and people passing by or near the site or using the nearby footpath. Due to the high hedges, numerous trees and soft landscaping, the site is also well screened. Be that as it may, the submitted landscape statement indicates that the site's highway frontages are visible from the surrounding area, and I observed on my site visit that this is particularly so for some distance in both directions on Chilcombe Lane. The mature hedgerow running along the site is a prominent feature which forms part of the surrounding narrow, hedge-lined Lane and its loss and replacement with a set-back hedge would therefore be conspicuous. Although the Council's landscape officer supported a landscaping condition securing the replacement hedge and tree planting amongst other aspects, I find that that and the other suggested conditions would not sufficiently mitigate the harm.

15. It has been put to me that hedgerows bordering the site are not protected and could be removed at any time, and there would be a benefit in that the replacement hedge could be protected by a landscaping condition requiring its retention. Be that as it may, I have little substantive evidence that the existing hedges would be removed irrespective of the development. I also observed on my visit that they provide the site with significant screening and privacy. It seems to me that hedge removal is therefore unlikely given the site's domestic garden use. I therefore do not consider this scenario to be particularly likely and consequently attach limited weight to it and the cited benefit.

16. I recognise that the Quantock Hills AONB Service did not object to the application and did not state that the development would be detrimental. However, their comments raise concerns about the effect of the development on the special qualities of the Quantock Hills, including in relation to the proposed access arrangements. The Quantock Hills AONB Service also refer to the aims and objectives of the AONB Management Plan (2014-2019), which include, amongst other aspects, conversing Quantock hedges and associated banks and supporting the protection of local distinctiveness in AONB settlements and Quantock lanes and roads. For the reasons above, I find that the development would not be consistent with these aims and objectives. The submitted landscape assessment also sets out that the management plan details, amongst other aspects, that the 'Quantock Hills AONB is visually very vulnerable…and the more intimate landscape of the lower slopes…the irregular hedged fields and small stone-built hamlets and villages, can be stripped of its special character by inappropriate development and the cumulative effect of insensitive changes over time'.

17. AONBs have the highest status of protection in relation to landscape and scenic beauty and great weight is to be afforded to conserving these aspects. I attach significant weight to this. I am also mindful of the duty under section 85 of the Countryside and Rights of Way Act 2000 for regard to be had to the purpose of conserving and enhancing the natural beauty of the AONB.

18. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area and the Quantock Hills AONB. I therefore find that it conflicts with Policy NH14 of the West Somerset Local Plan to 2032 (2016) (WSLP) and Policy TW/2 of the West Somerset District Local Plan

(2006) (WSDLP). Amongst other aspects, these require proposals to conserve or enhance the natural beauty of the AONB and seek the retention and protection of existing hedgerows and hedgerow trees which are of value to the area's landscape. The reference to 'an allowance' in WSDLP Policy TW/2 does not lead me to a different conclusion. The proposal would also be inconsistent with the provisions in the Framework in relation to achieving well-designed places and conserving and enhancing the natural environment.

Other matters

19. It has been put to me that the recent planning permission for Beacon Hill House is a material consideration and that the professional opinion of expert officers for that scheme is of considerable evidential weight. Although I note the AONB Service's comments for that scheme provided in the appellants' appeal statement, I do not have the full details of how that scheme came about. I am therefore unable to draw a direct comparison between it and this appeal proposal. Consequently, I give it limited weight and it is in any event necessary to determine this appeal on its merits.

20. Access is not a reserved matter and I note that visibility splays would be provided and that the highway authority has not objected. However, the evidence before me indicates that the visibility splay to the east, as shown on plan 2188A-PL-03 Rev A, cannot necessarily be maintained given its overlap with a section of hedge on the adjoining property. This therefore indicates that the development may not provide sufficient visibility for vehicles leaving the site. However, as I am dismissing the appeal for other reasons, I am not pursing this matter further because it could not lead me to a different decision.

21. The appellants assert that the development would comply with various development plan policies including, amongst others, WSLP Policy SC1. Although the Council alleges conflict with this policy in its appeal statement, it does not substantiate the alleged conflict and that policy is not listed in the reason for refusal. From the evidence before me, I am satisfied that the proposal is not contrary to WSLP Policy SC1. The development may also accord with other development plan policies, would contribute to meeting housing needs, and the Council raised no concerns in relation to impacts on wildlife and biodiversity. Be that as it may, these matters do not indicate that the development is acceptable, provide justification for development that conflicts with the development plan or outweigh the harm I have identified and the great weight given to conserving and enhancing landscape and scenic beauty of the AONB. Given the development's harm, the proposal does also not adequately address the environmental aspect of sustainable development as set out in paragraph 8 of the Framework. It does not therefore constitute sustainable development.

Conclusion

22. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR