Site: STONEY RIDGE, LANGPORT ROAD, WRANTAGE, TAUNTON, TA3 6BZ

Application number: 24/17/0046

Proposal: Variation of Condition No's 01 (restrictions of occupier and limited period) and 03 (number of caravans) of application 24/11/0017 at Stoney Ridge, Langport Road, Wrantage

Appeal Decision: 16 Aug 2018

Site: ALLERFORD FARM, ALLERFORD ROAD, NORTON FITZWARREN, TAUNTON, TA4 1AL

Enforcement Number: E/0162/27/16

Alleged Breach: Alleged non-compliance with planning approval at Allerford Farm, Norton Fitzwarren

Appeal Decision: Dismissed

Site: CHERRY ORCHARD LODGE, CHERRY ORCHARD, TRULL, TAUNTON, TA3 7LF

Application number: 42/17/0012

Proposal: Erection of 1 No. detached dwelling with detached double garage and associated works on land to the south east of Cherry Orchard Lodge, Cherry Orchard, Trull as amended by email dated 31 October 2017 and plans 2930/01C, 2A, 3A, 05A and 3D Visuals.

Appeal Decision: Allowed

Site: LAND ADJACENT TO TWO TREES, MEARE GREEN, WEST HATCH, TAUNTON

Application No: 47/17/0007CQ

Proposal: Prior approval for proposed change of use from agricultural building to 2 No. dwelling houses (Class C3) and associated building operations on land adjacent to Two Trees, Meare Green, West Hatch

Appeal Decision: Allowed

The Planning Inspectorate

Appeal Decision

Site visit made on 17 July 2018

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16th August 2018

Appeal Ref: APP/D3315/W/17/3191282
The Cottage, Stoneyhead, Wrantage, Taunton TA3 6BZ

- 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 Mr J Small against the decision of Taunton Deane Borough Council.
- The application Ref 24/17/0046, dated 21 August 2017, was refused by notice dated 10 November 2017.
- The application sought planning permission for retention of the mobile home sited on land adjacent to (and in lieu of) the lawful caravan site approved on 12th June 2008 under reference 24/08/0011LE (Use of land for stationing a caravan for residential purposes), The Cottage, Stoneyhead, Wrantage without complying with conditions attached to planning permission Ref 24/11/0017, dated 16 June 2011.
- The conditions in dispute are No 1 which states that:"1*. The use hereby permitted shall be carried on only by Amy Penfold and shall be for a limited period being the period during which the caravan site pursuant to this permission is occupied by Amy Penfold. The caravan and all materials and equipment brought on to the site in connection with the use shall be removed within three months from cessation of occupation";* and condition No. 3 which states that "3.*No more than 1 caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed within the application site as shown edged red on plan number 4949 at any time."*
- The reasons given for the conditions are: 1. "*The site is in open countryside where the siting and occupation of a caravan on the land is not permitted other than for the personal circumstances of Amy Penfold who has lived on the adjacent site for 30 years. Such personal circumstances are considered to outweigh the harm to the Somerset and Exmoor National Park policies STR1, STR6 and 49; Taunton Deane Local Plan policies S1, S2, S7 and EN12 and National policies contained within the Planning Policy Statements 1 and 7; Planning Policy Guidance note 13 and Regional Planning Guidance 10 for the period of her occupation"*; and 3. *"In order to ensure that an additional caravan is not sited on the application site resulting in an intensification of the residential use on the site which is located in the open countryside in a non-sustainable location where such an intensification would be contrary to Somerset and Exmoor National Park policies STR1, STR6 and policy 49; Taunton Deane Local Plan policies S1, S7 and EN12 and Planning Policy Statements 1 and 7, Planning Policy Guidance note 13 and Regional Planning Guidance 10."*

Decision

1. The appeal is allowed and planning permission is granted for retention of the mobile home sited on land adjacent to (and in lieu of) the lawful caravan site approved on 12th June 2008 under reference 24/08/0011LE (Use of land for stationing a caravan for residential purposes), The Cottage, Stoneyhead, Wrantage in accordance with

the application Ref 24/17/0046, dated 21 August 2017 without compliance with condition numbers 1 and 2 previously set out in planning permission Ref 24/11/0017, granted on 16 June 2011 by Taunton Deane Borough Council but otherwise subject to the following condition:

1. *No more than 1 caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed within the application site as shown edged red on plan number 4949 at any time."*

Procedural Matters

2. Condition 2 on the planning permission granted in 2011 relates to the submission and carrying out of a landscaping scheme. There is nothing in the evidence to suggest this condition has not been fully complied with. Accordingly it is not necessary to impose this condition on the new permission which is granted by my decision.

3. Whilst the appeal seeks the removal of two conditions, one seeking the removal of an occupancy condition and the second seeking to increase the number of caravans on the site, the effect of my decision is to allow the appeal only in respect of the first of these conditions.

4. Since the Council made its decision, the National Planning Policy Framework has been revised. References elsewhere in my decision are to the revised Framework, published on 24 July 2018. The main parties have been given the opportunity to comment on the revised Framework.

Main Issue

5. The main issue is whether the conditions are necessary to prevent additional residential accommodation taking into account the site's location outside any defined settlement boundary.

Reasons

6. The evidence indicates that a named person lived on the site from 1980 occupying a caravan adjacent to The Cottage and subsequently occupying a mobile home further to the east of The Cottage. In 2008, a Certificate of Lawfulness for an Existing Use was granted in respect of the use of land adjacent to The Cottage for the stationing of a single caravan for residential purposes. The basis for granting the certificate was that the use of the land had begun more than 10 years previously.

7. Planning permission was granted in 2011 for a mobile home on the appeal site ("the 2011 permission") with condition 1 restricting occupation to the named person and requiring cessation of the use of the land for this purpose when occupation by this person ceases. At the time of the 2011 permission, the mobile home was already in place. The certificate of lawful existing use relates to a smaller area of land than the land identified in the 2011 permission. However the 2011 site encompasses the land covered by the certificate. A caravan or mobile home could therefore be occupied within part of the appeal site without any restriction upon who occupies the caravan. Consequently, I find no harm would arise from removing the occupancy restriction on the mobile home, as the mobile home could occupy a different part of the appeal site and would then not be subject to any occupancy restriction.

8. The appeal site lies beyond the eastern end of a short row of houses at Stoneyhead. The site is outside any defined settlement boundary and therefore in the open countryside in terms of development plan policy. The appellant seeks to increase the number of caravans which would be used for residential purposes on the appeal site from one to two. A caravan or mobile home for permanent occupation is appropriately considered in the context of housing policies and, in this case, against relevant policies for residential developments in the countryside.

9. The National Planning Policy Framework promotes sustainable development in rural areas and housing in locations where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside are to be avoided unless they would meet one or more identified circumstances, none of which apply to the appeal proposal. The appeal site is not isolated in that it is not remote from the small number of dwellings at Stoneyhead. However, the proposed additional caravan or mobile home would fail to comply with the development locations identified in Policy SP1 of the Taunton Deane Borough Council Core Strategy 2011
– 2028, adopted in September 2012 (CS). This policy prioritises the most accessible and sustainable locations, maximising the use of previously developed
land and minimising pressures on the natural environment.

10. CS Policy DM2 of the addresses development in the countryside, identifying the uses which will be supported in countryside locations. The siting of residential (non-touring) caravans or mobile homes is not one of the uses supported by Policy DM2. The policy seeks, amongst other matters, to protect the intrinsic character of the open countryside.

11. The appellant is of the view that there is a fallback position such that at least two mobile homes could be located on the land covered by the certificate of lawful use and that the Council would have no control over the number of caravans. The certificate refers to a single mobile home. Whether more mobile homes could be sited on the land under the terms of the certificate is not a matter for me to determine under a Section 78 appeal. However, notwithstanding the terms of the certificate, it is open to the appellant to apply to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

12. I have noted that the appellant considers the conditions imposed on the 2011 planning permission were unreasonable. However, the site which is the subject of the 2011 permission differs from that covered by the certificate of lawful existing use. Furthermore, the location of the site is not one where residential development would normally be allowed.

13. I find that the removal or variation of Condition 3 to increase the number of caravans or mobile homes on the site would conflict with the development plan and the material considerations are insufficient to outweigh the conflict with the development plan.

Conclusion

14. For the reasons given above I consider that the appeal should be allowed but only insofar as it relates to the removal of condition 1.

J E Tempest

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Site visit made on 30 May 2018

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2018

Appeal Ref: APP/D3315/C/17/3189840
Land at Allerford Farm, Allerford Road, Norton Fitzwarren, Taunton TA4 1AL

- 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 Michael Edwin James against an enforcement notice issued by Taunton Deane Borough Council.
- The enforcement notice, was issued on 30 October 2017.
- The breach of planning control as alleged in the notice are:
  i. The construction of a concrete car parking area that is larger than that permitted by planning permission 25/15/0007 edged/hatched orange on the attached plan;
  ii. Without planning permission, the construction of a concrete track in the approximate position shown edged/hatched green on the attached plan;
  iii. The erection without planning permission of external lighting at the car parking area;
  iv. The construction of concrete pathways that are not in accordance with approved drawing Z21/23C of planning permission 27/15/0026 in that they are not porous shown coloured pink on the attached plan; and
  v. Without planning permission the construction of foundations for a new "store" building in the approximate position shown edged/cross-hatched purple on the attached plan.
- The requirements of the notice are:
  i. Remove the part of the concrete car parking area that is larger than that permitted by planning permission 25/15/0007 as shown edged/hatched orange on the attached plan;
  ii. Remove the concrete track that has been constructed in the approximate area edged/hatched green on the attached plan;
  iii. Remove the external lighting at the car parking area;
  iv. Remove the concrete pathways that are not in accordance with approved drawing Z21/23C of planning permission 27/15/0026 in that it is not porous, coloured pin on the attached plan; and
  v. Remove the foundations for a new "store" building and services to it in the approximate position shown edged and cross-hatched purple on the attached plan.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Preliminary Matters

1. Within the grounds of appeal, the appellant has made various comments regarding the merits and reasons for the alleged breaches of planning control.

   However an appeal has not been brought on ground (a). I cannot therefore consider the planning merits of the case.

The referenced planning permissions

2. The notice has been issued with respect to s171A(1)(a) of the Town and Country Planning Act 1990 as amended (the Act), therefore alleging "carrying out development without the required planning permission". Reference is however made to planning permissions within some of the allegations. The appeal site is subject to a complex planning history. The notice refers to application references '25/15/0007' and '27/15/0026'. However the Council acknowledges that reference to '25/15/0007' was incorrect and it should in fact have been '27/15/0007'. That error has not apparently confused the appellant who has understood which planning permissions are relevant.

3. The notice does not refer to any breaches of planning conditions imposed on those decisions. Planning permission granted with reference '27/15/0007' is quoted in the notice in order to define the nature and extent of the developments as alleged within paragraphs (3)(i) and (3)(iv). The wording of the allegations does not tell the recipient what has been done wrong without reference to that document and also an attached plan (to which I return to below). It would simplify the complex and confusing wording of the notice if the allegations in paragraphs (3)(i) and (3)(iv) referred to the nature of the development undertaken without planning permission. It would then be preferable to require at paragraphs (5)(i) and (5)(iv) that the development complies with the terms and conditions of the relevant permission (as allowed for by s173(4)(a) of the Act). As well as being more straightforward, due to s173(11) of the Act, that would also ensure the ongoing effect of other relevant planning conditions.

4. However, from the information before me, there are complications with the relevant planning permissions which neither party has fully addressed. It is therefore unclear whether such corrections would be appropriate. Planning permission '27/15/0007' was approved on 28 May 2015, and to remain lawfully extant would need to have been implemented by 28 May 2018. Subsequently, planning permission '27/15/0023' which has not been referenced on the notice, was submitted under the provisions of s73 of the act, (referred on the decision as a "variation of condition") and also had to be implemented before 28 May 2018. There are therefore 2 alternative planning permissions that may have been implemented with respect to the overall use of the site as well as related physical works that have been undertaken. Furthermore, as well as the time limitation, the decisions contain a number of pre-commencement conditions which could affect which of those decisions has been implemented.

5. The Council states that 27/15/0007 has been implemented but goes on to say that it could be argued that the subsequent permission (which I have taken to mean 27/15/0023) has been implemented. They also refer to plan 'Z21/12C' car park area plan as referred to in the notice as being common to both permissions but it is still necessary to know which decision is applicable. However based upon the submitted evidence, I do not know which permission

has been lawfully implemented. I would need to be confident that the terms and conditions of any permission referred to in the requirements of the notice could still be enforced.

6. Based upon the evidence available I cannot correct the flaws in the allegations

at paragraphs (3)(i) and (3)(iv) or the requirements at paragraphs (5)(i) and (5)(iv) in a way that could resolve my concerns.

Other concerns with the notice

7. The erection of external lighting is referred to within paragraph (3)(iii). It was confirmed at the site visit that the notice is targeted at the light columns around the central car parking area. However, there are also similar light columns elsewhere on the site, such as those along the driveway leading into the site, which the Council confirmed at my site visit, are acceptable. I saw that cars also park in that area alongside the driveway and so this is confusing. The number of light columns is not specified and no positions are shown on the plans. The notice is imprecise with respect to this allegation and therefore with respect to the corresponding requirements.

Inaccuracy of the 'notice plan'

8. At the site visit, the Council officers took measurements. The appellant had an opportunity to comment on the position of the items referred to on the notice and the accompanying plan. It was clear to me that the plan is inaccurate in a number of respects. Of particular note, the pathways indicated in red are not accurately shown and the track shown in green is several metres from the position indicated on the plan, relative to the parking area. The inaccuracies give me insufficient confidence that the other elements are shown accurately.

9. The plan cannot be relied upon and should be deleted from the notice. However the allegations and requirements of the notice are less clear without an accurate plan. This on its own would not be fatal to the validity of the notice. However given this along with the other flaws, the recipient of an enforcement notice cannot find out from within the four corners of the document what has been done wrong or what is required.

Conclusions

10. It is clear that the notice overall relates to Land at Allerford Farm which is sufficient to satisfy the Enforcement Notice Regulations[1]. I could delete the inaccurate and ambiguous notice plan from the notice. However, I consider that this along with the other concerns that I have means that the notice cannot be corrected without causing injustice.

11. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control and the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(b) and (c) of the 1990 Act as amended do not fall to be considered.

Formal Decision

12. The enforcement notice is quashed.

A Harwood INSPECTOR

[1] The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

The Planning Inspectorate

Appeal Decision

Site visit made on 11 July 2018

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28th August 2018

Appeal Ref: APP/D3315/W/18/3196961
Cherry Orchard Lodge, Cherry Orchard, Trull, Taunton TA3 7LF.

- 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 Dan McCarthy against the decision of Taunton Deane Borough Council.
- The application Ref 42/17/0012, dated 5 May 2017, was refused by notice dated 8 December 2017.
- The development proposed is a detached 3 bed residential dwelling with garage and associated landscaping on the land to the south east of Cherry Orchard Lodge.

Decision

1. The appeal is allowed and planning permission is granted for a detached 3 bed residential dwelling with garage and associated landscaping on the land to the south east of Cherry Orchard Lodge, at Cherry Orchard Lodge, Cherry Orchard, Trull, Taunton TA3 7LF in accordance with the terms of the application, Ref 42/17/0012, dated 5 May 2017, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matter

2. The planning application was determined on the basis of revised plans within which the scale and layout of the development changed considerably. As such Part E of the appeal form indicates that the description of development has changed, but whilst a different description has been given, this is not the same as the Council's description. The Council's description itself erroneously references a superceded plan, '05A'. I have been provided with no indication that either the Council's or the appellant's changes to the description were agreed between the parties. Therefore I have used the description given on the original planning application in the heading above but amended it by substituting '4 bed residential dwelling' for '3 bed residential dwelling', so that it accurately describes the revised proposal.

Main Issue

3. The main issue in this appeal is the effect that increased use of the existing access onto Church Road would have on the safety of other road users and pedestrians.

Reasons

4. The Council has raised no objection to the development of the new dwelling, garage and associated landscaping. The Council's objection arises solely in

regard to the increased use of Cherry Orchard by vehicles, and the corresponding increased use of the junction of Cherry Orchard with Church Road.

5. Cherry Orchard serves as an existing means of access for several dwellings. Its junction with Church Road is also partly shared with the driveway of a dwelling immediately adjacent to it. The Council indicates, and I agree that the junction currently fails to provide clear visibility from Cherry Orchard for 43 metres in either direction along Church Road. This is a value provided in Manual for Streets based on the safe stopping distance of a vehicle travelling at 30 miles per hour. Manual for Streets 2 however indicates that in absence of local evidence to the contrary, a reduced distance may not be a problem. In this regard, and in view of the fact that the junction already exists, the Council has provided no evidence to explain why visibility across 43 metres is essential.

6. Survey data presented by the appellant suggests that vehicle speeds along Church Road generally fall below the 30 miles per hour speed limit. I see no reason to question this having observed that a combination of road width, on-street parking, shared use of the road with pedestrians, and bends which reduce forward visibility act to naturally calm traffic speeds. Within this environment I consider that in practice the majority of vehicles are therefore likely to require less than 43 metres to stop.

7. In terms of the practical use of the junction, I observed that visibility from Cherry Orchard along Church Road is limited in both directions and that there is little scope for improvement. Visibility to the north-west is greatly restricted by a combination of the boundary wall and hedge of the adjacent property, and the way in which Church Road bends to the west. To the south east visibility is slightly less restricted, again by boundary treatments and the direction in which the road bears. In exiting Cherry Orchard it is therefore necessary for a driver to edge forward into Church Road creating the potential for collision.

8. I observed however that visibility of the junction from Church Road extends across a longer distance than visibility from the junction itself, and significantly so approaching from the south-east. I consider that a vehicle edging out of Cherry Orchard should be visible to a driver or cyclist travelling from this direction at a sufficient distance to enable them to slow and to comfortably avoid any collision. I have indeed been presented with no evidence of past collisions between vehicles travelling from the south-east and vehicles using the junction that would indicate otherwise.

9. Approaching from the north-west, visibility for an approaching driver or cyclist is more limited. The extent of limitation appears subject to variation dependent on whether or not cars are parked on the left hand side of Church Road, which can occur up to its junction with Mill Lane. In the absence of parking I consider that having travelled slightly beyond Mill Lane, an approaching driver or cyclist should have sufficient space to see a vehicle edging out of Cherry Orchard to avoid a collision. In the presence of on-street parking a vehicle approaching from the north-west would however be forced onto the right hand side of Church Road. A vehicle edging out of the driveway would therefore only be visible to an approaching driver in much closer proximity.

10. Whilst in theory this would increase the potential for collision, I consider that the limitations placed on forward visibility for persons forced into this road position give rise to other more pressing hazards. These include the potential of

collision with other vehicles travelling in the opposite direction, and pedestrians. In my opinion this combination of potential hazards requires drivers and cyclists to proceed with due caution and low speed, such that the potential for collision with a vehicle edging out of the driveway is significantly reduced. Again, I have been presented with no evidence of past collisions between vehicles travelling from the north-west and vehicles using the junction that would indicate otherwise.

11. Though I have been provided with an anecdotal report of "angry confrontations" occurring between road users at the junction, the details are too vague and lacking in detail for me to attach any weight to this.

12. The existing right hand splay at the junction provides sufficient space for a driver exiting Cherry Orchard to see pedestrians approaching on either side of Church Road from the south-east. A pedestrian should likewise be able to see a vehicle. Inter-visibility also exists where pedestrians approach from the north-west on the left hand side of Church Road. However, clear inter-visibility does not exist where pedestrians approach from the north-west on the right hand side of Church Road. As pedestrians approaching from this direction also have poor visibility of oncoming traffic, there seems a high likelihood that they would cross the road before encountering this danger. Even if not doing so, the width of the junction and very slow speed at which drivers are likely to enter it from Cherry Orchard would, in my opinion, greatly reduce the chances of collision. Furthermore, I have been presented with no evidence of past collisions between pedestrians and vehicles using the junction that indicates otherwise.

13. The appellant's survey data has been criticised for not fully capturing the afternoon time slot when Church Road is most heavily used by traffic generated by the village school. Use of the road by people attending social venues in the village has also been noted, for which times would further vary. However whilst I agree that the data has its limitations, nonetheless, the road appears to be generally lightly trafficked. As such, I find it reasonable to consider that my characterisation of the interaction between vehicles using the junction, other road users and pedestrians set out above should also hold generally true.

14. The fact that pedestrians and vehicles share use of Church Road acts to provide an environment in which all road users are required to exercise extreme caution and vigilance in order to avoid accidents. This is reasonably assumed to include adult supervision of children walking along the road to and from school. In this context, and in the absence of any evidence of past collisions noted above, even had the appellant's data been extended to fully include the suggested time slot, my view would be unchanged.

15. Third parties have raised the issue of limited turning space within Cherry Orchard, although this is not a concern shared by the Council, with whom I agree. The scheme provides ample space for vehicles to turn on site, and I note that in order to enable vehicular access to the site space at the end of the Cherry Orchard would need to be kept free of parking in the future. As such, the development could in fact improve the current availability of turning space within Cherry Orchard.

16. Whilst the proposed dwelling would give rise to a moderate increase in the number of vehicles using the junction of Cherry Orchard with Church Road, I am mindful that this could also arise if vehicle ownership and/or use increased amongst existing residents of dwellings along Cherry Orchard. There is indeed

no reason to consider that levels of vehicle ownership and/or use will remain static in the future. Dismissal of this appeal would not therefore prevent potential intensification in the use of the junction, though this might be less certain to occur.

17. In view my findings above, and in the absence of evidence to the contrary, I am drawn to conclude that the moderately increased use of the existing junction arising from the development would not be likely to have an adverse impact on the safety of other road users and pedestrians.

18. As such I find that the development would not be in conflict with part b of Policy DM1 of the Taunton Deane Borough Council Adopted Core Strategy 2011-2028, which seeks to ensure that additional road traffic arising from development does not lead to road safety problems, amongst other things.

Other Matters

19. The potentially adverse impact of the new dwelling on local drainage and sewers has been raised as an issue. The water authority has however indicated that subject to surface water being drained into a soakaway, it would have no objection. This should indeed help to avoid the reported occurrence of sewers overflowing at times of heavy rain. Though the Council states that drainage will be dealt with under the Building Regulations, and I agree that design and construction standards are covered in this way, I consider that use of a condition would be an appropriate means of securing the provision of a site specific scheme of surface water drainage featuring soakaways.

20. It has been claimed that the development would have an adverse impact on the living conditions of the occupants of the Coach House which neighbours the site, as a result of overbearing, overshadowing and loss of sunlight, noise and disturbance, and on the occupants of 16 Church Road as a result of overlooking. The Council has not raised concern on grounds of overbearing, overshadowing and loss of sunlight given the existing presence of a very tall 'hedge' along the boundary. I agree that this represents such a considerable existing feature that the proposed dwelling would have a minimal effect in itself. The boundary with No 16 similarly has a good level of screening and only the very bottom of the large and irregularly shaped garden would be affected.

21. Whilst some noise and disturbance would inevitably arise during the construction of the dwelling, this would be of limited duration and unlikely to extend outside normal working hours. Noise and disturbance would otherwise arise from use of the access into the site which is close to the frontage of the Coach House. However, as existing parking in this space would cease in order to enable access, benefits to the occupants of the Coach House would also arise given the removal of noise and disturbance associated with parked vehicles, and given improvements to the visual setting of the Coach House. As a result, I consider that these benefits would reasonably balance any perceived harm.

22. The boundary of Trull Conservation Area runs close to the junction of Cherry Orchard with Church Road. However, in my opinion, the moderately increased use of the junction would have no discernible effect on the existing setting of this designated heritage asset.

23. A broader adverse visual impact on the setting of the adjacent playing field has been claimed, but again the Council does not share this view given the

character of the existing setting. With particular regard to the scheme as amended, I see no reason to disagree.

24. Issues regarding legal rights of access along Cherry Orchard and access to the sewer network have been raised. Notwithstanding this, I have been provided with no evidence to suggest that these matters cannot be addressed under legislation dealing with private legal rights.

25. The Parish Council has raised objections in terms of the development of a garden and increased density being at odds with Policy H6 of the Trull and Staplehay Neighbourhood Plan. Nevertheless, from the evidence before me, I see no reason to disagree with the Council's assessment that the development would be appropriate when viewed within its context.

Conditions

26. I have added conditions setting out the time limit for commencement of the development, and identifying the approved plans for sake of certainty. In addition to a condition requiring the details of surface water drainage and soakaway provision to be agreed, I have added one further condition requested by the Council regarding the agreement of materials samples to ensure the development is visually harmonious. However, I have used modified wording to that supplied by the Council in order to comply with the relevant advice within the Planning Practice Guidance.

Conclusion

27. For the reasons set out above, and having had regard to all other matters raised, the appeal is allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

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: 16.2930/01 Rev C, 16.2930/02 Rev A, 16.2930/03 Rev A, 16.2930/05 Rev B.

3) Development shall not commence until full details of a scheme of surface water drainage, including the use of soakaways has been provided to and agreed in writing by the local planning authority. The scheme must then be completed in accordance with these details prior to the first occupation of the dwelling hereby approved, and thereafter maintained.

4) No construction of the outer surfaces of the building shall commence until samples of external facing and roofing materials have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.

The Planning Inspectorate

Appeal Decision

Site visit made on 17 July 2018

by J E Tempest BA(Hons) MA PGDip PGCertHE MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 29th August 2018

Appeal Ref: APP/D3315/W/18/3194074
Land adjacent to Two Trees, Meare Green, West Hatch, Taunton, Somerset

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
- The appeal is made by Mrs D Barrett against the decision of Taunton Deane Borough Council.
- The application Ref 4/17/0007/CQ, dated 30 May 2017, was refused by notice dated 26 July 2017.
- The development proposed is change of use from agricultural building to 2 no. dwelling houses (Class C3) and associated building operations.

Decision

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for change of use from agricultural building to 2 no. dwelling houses (Class C3) and associated building operations at land adjacent to Two Trees, Meare Green, West Hatch, Taunton, Somerset in accordance with the application Ref 4/17/0007/CQ made on 30 May 2017 and the details submitted with it including plan numbers M1, M2, M3, M4, M5 and F1758 pursuant to Article 3(1) and Schedule 2, Part 3, Class Q.

Preliminary Matters and Main Issue

2. The description of development is taken from the Council's decision notice.

3. The application was made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ("the GPDO"). Class Q permits development consisting of (a) change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order and (b) building operations reasonably necessary to convert the building.

4. Development falling within Class Q is deemed to be granted planning permission by the GPDO provided it would comply with the limitations listed in paragraph Q.1.

5. The GPDO also states at paragraph W(11) of Schedule 2 that development under Part 3 must not begin before one of the following:

(a) The receipt by the applicant from the local planning authority of a written notice of their determination that such prior approval is not required;

(b) The receipt by the applicant from the local planning authority of a written notice giving their prior approval; or

(c) The expiry of 56 days following the date on which the application under sub-paragraph (2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.

6. The requirement for prior approval is akin to a pre-commencement condition attached to the grant of permission by Article 3(1). Development which takes place not in accordance with the terms or conditions of the permission would be at risk of enforcement action. However, the prior approval procedure set out under the relevant Part of the GPDO makes no provision for any determination to be made as to whether the development would be permitted development. Consequently, whether or not the proposed development would be permitted under the various restrictions and conditions relating to Class Q is outside the remit of this decision.

7. The **main issue** in this appeal is therefore whether the Council notified the applicant of its decision within the statutory period.

Reasons

8. The declaration date on the application form is 30 May 2017. The documents are stamped as having been received by the Council on 31 May 2017 and the Council forwarded a letter to the appellant advising that the application was registered on 31 May 2017 and that the Council would inform the appellant within 56 days ie by 26 July 2017 whether or not the Council's approval to the development was required. The Council decision confirming that prior approval was required and was refused is dated 26 July 2017, with the words "First Class" underneath the date. A photocopy of an envelope provided by the appellant provides a post mark of 27 July 2017. Whilst there is nothing which definitively links the envelope to the decision, the Council do not provide any evidence to indicate that any method other than first class post was used to deliver their decision and do not dispute the failure to notify the appellant of their decision in accordance with the provision of the GPDO.

9. Section 7 of the Interpretation Act 1978 sets out that unless the contrary is proved, service is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of the post. Consequently, on the balance of probability based on the available evidence, the Council did fail to notify the appellant with the requisite 56 day period and therefore prior approval is deemed to be granted on the expiry of the statutory period for the Council to notify the developer of its determination.

Other Matters

10. The Council's reasons for refusing the application include the proposed works not falling within the scope of Q1(b) and also that the proposals would result in a danger to highway safety.

11. I have noted the points raised by some local residents with regard to works carried out to the building prior to 2013 and questioning whether the building

which is the subject of this appeal is lawful. Article 3(5) provides that planning permission granted by Schedule 2 of the GPDO does not apply if the building operation or use is unlawful. However, this is a matter for the Council in the first instance and is not a matter for this appeal.

12. I have also noted points raised by and on behalf of local residents with regard to whether the site is in solely agricultural use, and the Council's views that the works proposed do not fall within the scope of Class Q(b). However, as permission is deemed to have been granted these matters fall outside the remit of this appeal.

13. The appellant points out that visibility at the point of access to the public highway could be improved by works on land within the appellant's control and the public highway. Whilst I agree that this is the case, as I have found that permission is deemed to have been granted, I am unable to impose conditions as part of this appeal.

Conclusion

14. For the reasons given above, I conclude the appeal should be allowed and prior approval is deemed to be granted.

J E Tempest

INSPECTOR