

## Appeal Decisions February 2019

**Site:** Maundown Cottage, Jews Lane, Maundown, Wiveliscombe, Taunton TA4 2BU

**Proposal:** Application to discharge clauses 7.1, 7.2 and 7.3 of S106 Agreement dated 4 April 2013 on planning application number 49/12/0054 at Maundown Cottage, Jews Lane, Wiveliscombe

**Application number:** 49/18/0019/VSC

### Reasons for refusal

1. The site is located within the open countryside, divorced from any facilities and settlements, where a permanent and self contained residential dwelling, remote from adequate services, would generate the need for additional travel by private motor vehicles. The development is therefore considered to be an unsustainable form of development contrary to Taunton Deane Core Strategy Policies SP1 and DM2 (adopted September 2012). The creation of a separate unit in this location would also fail the tests of sustainability as set out in the National Planning Policy Framework. The applicant's personal circumstances cannot be used to outweigh the strong policy objection set out in the Development Plan and government advice.

**Appeal decision: THE APPEAL IS DISMISSED**



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### Appeal Decision

Site visit made on 6 November 2018

**by I Bowen BA(Hons) BTP(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 February 2019**

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**Appeal Ref: APP/D3315/W/18/3207710**

**Maundown Cottage, Jews Lane, Maundown, Wiveliscombe, Taunton, Somerset TA4 2BU**

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
- The appeal is made by Mr Benjamin Stevens and Mrs Rosemary Stevens against the decision of Taunton Deane Borough Council.
- The development to which the planning obligation relates is the conversion of outbuilding to form self contained annexe to the main dwelling.
- The planning obligation, dated 4 April 2013, was made between Taunton Deane Borough Council and Benjamin Stevens and Rosemary Stevens.
- The application Ref 49/18/0019/VSC, dated 7 April 2018, was refused by notice dated 11 June 2018.
- The application sought to have the planning obligation discharged as follows: Application to discharge clauses 7.1, 7.2, 7.3 of Section 106 dated 4 April 2013

## **Decision**

1. The appeal is dismissed.

## **Preliminary Matters**

2. A revised National Planning Policy Framework (the revised Framework) was published on 24 July 2018, replacing the previous version. The appellants were notified of the publication and invited to make comment on any implications the revised Framework's publication has for the consideration of the appeal development. I have had regard to the comments received and to the revised Framework in determining this appeal.
3. Planning permission was granted on 11 April 2013 for the change of use and conversion of an outbuilding to residential accommodation as an annexe to the main dwelling (49/12/0054) (the original planning permission). A s106 Planning Agreement was entered into in that regard restricting the terms of residential occupation of the building. The Agreement includes 3 clauses (the disputed clauses) which can be summarised as follows:
  - i. That the accommodation shall remain as ancillary accommodation to the main dwelling (clause 7.1 of the Agreement);
  - ii. That the main dwelling shall at no time become a separate unit of accommodation from the ancillary accommodation (7.2);

- iii. That the ancillary accommodation be occupied by a dependent relative of the occupier of the main dwelling (7.3).
4. In addition, a fourth obligation required the payment of a financial sum to the Local Planning Authority to pay reasonable legal costs. The latter obligation is not in dispute and, whilst I have seen no details as to whether this has previously been discharged, that is not a matter before me in this appeal. I am therefore proceeding on the basis that the appeal proposal is to modify the s106 Agreement through the discharge of the planning obligations covenanted in Paragraphs 7.1, 7.2 and 7.3 of that Agreement. This is consistent with the appellants' statement submitted with the appeal.
5. For consistency, the appeal property address I have used above is as set out in the s106 Agreement.

### **Main Issue**

6. The main issue is whether the disputed clauses continue to serve a useful purpose, having regard to whether the appeal site would be a suitable location for the creation of a dwelling for independent occupation.

### **Reasons**

7. The buildings on the appeal site comprise Maundown Cottage (the main dwelling) which is a large detached house and the Annexe. The Annexe and main dwelling are each served by independent accesses, parking areas and gardens. According to the Council's calculations, the buildings lie approximately 40m from each other. The main dwelling is unoccupied but appears to be suitable for habitation.
8. The Annexe is a single storey former agricultural building which was converted to self-contained residential accommodation under the original planning permission. That permission was granted, exceptionally, to allow occupation for dependent relatives on site as part of the same household as the main dwelling. The effect of the discharge of the relevant obligations within the Agreement would therefore be to remove the legal sanction against independent occupation of the buildings<sup>1</sup> contained within the Agreement.
9. The adopted Taunton Deane Core Strategy 2011 – 2028 (September 2012) (the Core Strategy) sets out an approach to locating residential development according to a hierarchy of settlements. This is based on a strategy which seeks, amongst other considerations, to steer development to the most accessible and sustainable locations. Accordingly, development in the countryside is supported for a restricted range of exceptional types of development.
10. The appeal site is located on high land in the countryside and access to it is rather tortuous via Jews Lane, a steep and very narrow, single-track rural lane. Jews Lane connects the appeal site to the main road below where there is a cluster of dwellings and other buildings. From here, the nearest settlement with any services is Langley which is some distance quite steeply downhill via a road which is unlit and lacking footways. The larger settlement of Wiveliscombe lies

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<sup>1</sup> I note that planning permission 49/12/0054 itself is subject to a condition restricting occupation of the annexe. Therefore, even if the appeal were allowed, the appellants

would not be entitled to dispose of the main house independently without a new planning permission.

further away beyond Langley. I have been provided with no details to suggest that public transport is available within a reasonable distance of the site and given the nature of the road network and the distances involved, it is unlikely residents would walk or cycle to and from services, especially in inclement weather or during the hours of darkness.

11. Consequently, the appeal site occupies a particularly inaccessible location in terms of access to day-to-day services and facilities by modes other than the private car. Whilst I appreciate some residents in the area do use bicycles I nevertheless consider it highly likely that an additional household at the site would be heavily reliant on the private car.
12. It has been suggested that the occupation of the dwelling by the appellants' family members would lead to increased car use. However, I have no firm basis on which to conclude that would necessarily be the case for all future occupiers on a long-term basis. Indeed in such instances it is reasonable to assume there would be a certain number of shared trips made. It has also been suggested that the main house would remain empty in the event of the appeal being dismissed. However, I see no good reason why the main dwelling could not be fully occupied in the future even with a tied Annexe accommodation. I do not therefore regard the effect of the current planning obligations as being to prevent a large house being available to rent or buy in the Parish.
13. It has been suggested that employees of local businesses could occupy the dwelling in the event of the severance of the main house and annexe and I understand that interest has been shown from an equestrian business in particular in leasing the main house for employees. Nevertheless, I have no secure mechanism before me which would ensure local businesses would benefit in this way. Similar, whilst there is some employment available locally which could be taken up by a future occupier of the main dwelling, I have no information to suggest that this would be likely or that local employers are experiencing particular difficulties in attracting employees to the extent that would justify departing from the spatial strategy of the Development Plan. In this regard, I am mindful that proximity to employment is not, in itself, sufficient to comply with local and national planning policies on the achievement of sustainable development.
14. It has been said that Maundown Cottage was once 2 farmworkers dwellings. However, no such dwellings now exist and even if I had strong evidence of the historical development pattern on the site, my decision rests on the circumstances of the land as it currently exists.
15. Given the above, I conclude that the disputed clauses continue to serve a useful purpose in prohibiting the independent occupation of the Annexe and main dwelling in a countryside location not well served by day-to-day services and facilities. As such the proposal would not accord with Policy SP1 and Policy DM2 of the Core Strategy. Those policies promote development in sustainable, accessible locations and seek to strictly control development in the countryside except for a range of specified acceptable uses. As such, the proposal would also not accord with the revised Framework which, in operating a presumption in favour of sustainable development, requires development proposals to be approved where they accord with an up-to-date development plan, and this harm is not outweighed by any other material considerations.

## Other Matters

16. I appreciate that the appellants have lived at the property for many decades and their strong preference would be to remain living in the Annexe supported by regular visits from family members. I am mindful that dismissing the appeal would mean that the appellants may need to consider alternative options for meeting their accommodation needs. Being mindful of the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, this is a matter to which I attach significant weight. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed. There is no evidence before me to demonstrate the appeal development is the only means by which the appellants' needs may be met and I am also conscious that the removal of the planning obligations would be permanent and so would endure beyond the time when any future personal circumstances exist. Accordingly, dismissing the appeal would be a proportionate response given the harm I have found, as set out above.
17. I have had regard to all the other matters raised including that a triple garage was granted planning permission in the vicinity of the site. However, a domestic development to serve an existing household is not comparable to the creation of an additional residential unit in the countryside.
18. I have also had regard to the fact that third party letters of support have been received, and individual members of Wiveliscombe Town Council (WTC) support the proposal despite the fact that WTC raised a formal objection. However, this would not in itself justify granting permission.
19. I have further noted the appellants' submission that Taunton Deane Borough Council currently levies Council Tax separately on the two buildings and has issued other paperwork in relating to an empty property. However, these are not matters which are relevant to consideration of the planning merits of the appeal.

## Conclusion

20. For the reasons given, the appeal is dismissed.

*Ian Bowen*  
INSPECTOR

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## Enforcement Appeal

**Site:** [Insert site address]

**Alleged Breach of planning control:** [Insert alleged breach]

**Reference Number:** [insert our reference]

**Appeal decision:** [INSERT DECISION]

