

Planning East – Appeal Decisions

Please see below list of appeal decisions made by the Planning Inspectorate between 19th December 2023 and 22nd January 2024.

Full details of all appeals, can be found on the Council's website <https://publicaccess.mendip.gov.uk/online-applications/>

Application Reference	2022/1074/FUL
Site Address	Land Adj to Unit 1, Dyehouse Lane, Glastonbury, Somerset
Applicant/Organisation	C White, CWS Engineering Ltd
ApplicationType	Full Planning Permission
Proposal	Retention of 3no. Caravans for temporary 3 year use
Decision	Refusal (Ward)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	08.01.2024



Appeal Decision

Site visit made on 2 January 2024

by Neil Pope BA (HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 January 2024

Appeal Ref: APP/Q3305/W/22/3314152

Land adjacent to Unit 1, Station Works , Dyehouse Lane, Glastonbury, Somerset, BA6 9UU.

- 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 Colin White of CWS Engineering Ltd against the decision of Mendip District Council.
- The application ref. 2022/1074/FUL, dated 7/5/22, was refused by notice dated 9/9/22.
- The development proposed is the retention of 3 caravans (resubmission).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In April 2023, Mendip District Council was incorporated into Somerset County Council (the LPA).
3. The LPA has informed me that it is unable to demonstrate a 5 year housing land supply. It estimates that the current supply is between 2.87-2.94 years.
4. During my visit, there were three caravans on the appeal site. One of these was not in use and was in a rather poor condition. The appellant informed me that this was to be replaced by another caravan, also currently unoccupied, and sited nearby on land edged in a blue colour on the submitted plans.

Main Issues

5. The five main issues are: firstly, the effect upon the local economy, having particular regard to the provision of employment land and the need to support growth; secondly, the effect upon the local townscape; thirdly, whether there would be adequate living conditions for occupiers of the caravans, having particular regard to private amenity space, privacy and noise disturbance; fourthly, whether the development would be likely to contribute to an unacceptable increase in phosphate levels within the Somerset Levels and Moors Ramsar Site and; fifthly, the flood risk implications of the development.

Reasons

Planning Policy

6. The development plan includes the Mendip District Local Plan Part 1 2006-2029 and the Mendip District Local Plan Part II (LP). The most important policies to the determination of this appeal are CP3 (supporting business development and growth), DP1 (local identity and distinctiveness), DP5 (biodiversity), DP7

(design and amenity), DP8 (environmental protection), DP20 (reuse of employment sites), DP23 (flood risk) and DP25 (employment land).

7. My attention has also been drawn to the LPA's Supplementary Planning Document (SPD) 'Marketing and Business Evidence to Support Planning Applications' (2017).
8. In determining this appeal, I have also had regard to the provisions of the National Planning Policy Framework (the Framework).

First Main Issue - Local Economy

9. LP policy CP3 supports business development and growth. LP policy DP20 supports the reuse of employment sites where, amongst other things, development would deliver comparable employment generation or wider economic benefits and would not prejudice LP policy CP3. Under LP policy DP25, proposals will be supported which maintain the integrity of, and support investment in jobs, premises and infrastructure within established employment areas. Proposals for the change of use to non-employment sites are set out within the LPA's SPD.
10. The LPA has informed me that the appeal site is in established industrial use and is identified for employment use as part of the LP. As I saw during my visit, immediately to the north of the site there are two industrial buildings owned by the appellant (neither of which appeared to be in use). Immediately to the south of the site (and on part of the former Somerset and Dorset railway line) there is a storage container depot. To the south west of the site there is a sizeable scrap/breakers yard.
11. The access to the appeal site also serves some other business premises (including the two above noted industrial buildings), two flats/apartments and a pair of bungalows. All of these buildings/premises are also owned by the appellant. I understand that the appeal site was formerly garden space to the bungalows alongside which, in the past, were occupied by railway employees.
12. I recognise the economic need to ensure that there is variety and choice in the availability of employment land and buildings within this part of Somerset. The loss of employment land and/or buildings could also undermine efforts to support or strengthen the local economy. However, as explained by the appellant, the caravans would provide accommodation, during part of the working week, for those employed (skilled engineers) in his businesses and who are unable to find affordable rented accommodation within the local area. In this regard, I have noted above the current housing land supply position.
13. The caravans would be stationed on the appeal site for a limited period of time and would not entail the loss of land that has previously been used for employment purposes or result in the permanent loss of land allocated for employment use. Moreover, the provision of residential accommodation, which could be tied by way of suitably worded planning condition, would help attract and/or retain the necessary labour to support the appellant's businesses. In so doing, the proposal would accord with the objectives of LP policy CP3 and would not conflict with LP policies DP20 or DP25.
14. I conclude on the first main issue that the proposal would help to support the local economy.

Second Main Issue - Townscape

15. I note the concerns of the LPA that the caravans are of an unsympathetic design and appearance, have a haphazard layout and fail to maintain local identity. However, the LPA has also informed me that the character of the area is dominated by industrial uses and development. As I saw during my visit, the neighbouring scrap/breakers yard, storage containers, industrial buildings and commercial premises are lacking in any distinctive character or local identity. The design of the flats/apartments and bungalows alongside are also unremarkable and caravans are what they are.
16. Whilst I recognise the importance of encouraging good urban design, it is unclear to me what distinctive qualities or attributes of the built environment the LPA is seeking to encourage here. Although the caravans can be seen from a public footpath that bisects the countryside to the north of the appeal site, they appear against the backdrop of the scrap/breakers yard, the container storage depot and in the context of a variety of industrial buildings. They cannot reasonably be said to harm the character or appearance of the area.
17. I conclude on the second main issue that development does not detract from the townscape quality (such as it is) of the local environment. There is no conflict with the provisions of LP policies DP1 or DP7.

Third Main Issue - Living Conditions

18. There is no private external amenity space set aside for the occupiers of the caravans and the caravans are closely grouped together. Whilst I note the LPA's concerns regarding the likely impact for future occupiers, the caravans are intended to be used only as overnight accommodation (Monday-Thursday) and for employees of the appellant's neighbouring business.
19. The caravans would not be the sole or main residence of the occupiers and are unlikely to be occupied during daylight hours, other than at breakfast and dinner times in the summer months. Although not ideal (the terms of any separate Caravan Site Licence that may be required could stipulate separation distances for the caravans and/or provision of amenity space) on balance, and for the limited duration of the overnight stays/sleeping accommodation, the absence of private amenity space and the proximity of the caravans to one another would provide adequate living conditions.
20. As I saw and heard during my visit, the caravans are in close proximity to various industrial/business premises, some of which are capable of generating significant volumes of noise. In this regard, activity within the scrap/breakers yard was clearly audible when standing on the appeal site. If uses were to resume from the neighbouring industrial buildings there could be further noise disturbance. This is not an area where general residential development is to be encouraged as it would be very unlikely to provide a satisfactory living environment for residents. This could also result in noise complaints being made to the LPA which, in turn, could affect the efficient operation and viability of neighbouring businesses.
21. However, the LPA has not made me aware of any noise complaints from occupiers of the neighbouring flats/apartments or the bungalows immediately alongside. Furthermore, the caravans would be occupied when neighbouring businesses are likely to have ceased operating for the day or had yet to

commence operating. As the appellant has control over some of the neighbouring industrial/business premises and the occupiers of the caravans would be employed in other neighbouring industrial /business premises, there would be a measure of control over some activities around the appeal site.

22. I conclude on the third main issue that, on balance, the proposed development would provide adequate living conditions for occupiers of the caravans and there would be no conflict with the provisions of LP policies DP7 or DP8.

Fourth Main Issue - Somerset Levels and Moors Ramsar Site

23. I understand that the appeal site lies within the hydrological/fluvial catchment and the Impact Risk Zone of the Somerset Levels and Moors Ramsar Site and Special Protection Area (SPA). Amongst other things, this extensive area of lowland wet grassland supports an assemblage of rare aquatic invertebrates. Natural England has advised that poor water quality, due to nutrient enrichment from elevated levels of phosphorus, has resulted in a loss of biodiversity¹ within these protected areas and has led to them being in an 'unfavourable condition'.

24. The proposed development could result in an unacceptable increase in phosphate levels from foul water discharges entering into the above noted hydrological/fluvial catchment. If this was to arise, it would have further adverse effects upon biodiversity within the Ramsar Site and SPA and prevent this protected site from achieving its conservation objectives. This would conflict with the provisions of LP policies DP5 and DP8.

25. The appellant's agent has informed me that the development would be served by an existing cess pool. I understand that the foul waste is collected from here on a regular basis and is then discharged into a sewage works whose outflow drains into water courses away from the Ramsar Site and SPA. However, there are no details before me to demonstrate/substantiate this and there does not appear to be any mechanism in place (such as a planning obligation) to ensure that, in future, foul waste would not be discharged into the hydrological/fluvial catchment of this protected area.

26. On the basis of the information before me, I reach a similar finding to the Inspector who determined an appeal for a dwelling on a site at Wells that has been drawn to my attention (ref. APP/Q3305/W/22/3294179). It has not been demonstrated, beyond reasonable scientific doubt, that the proposed development would achieve nutrient neutrality.

27. I conclude on the fourth main issue that there is a realistic possibility that the development would contribute to an unacceptable increase in phosphate levels within the Somerset Levels and Moors Ramsar Site and SPA.

Fifth Main Issue - Flood Risk

28. Established national and local planning policies attach importance to the need to avoid increasing the risk of flooding and seek to direct development away from areas at highest risk. In this regard, the LPA has informed me that the appeal site lies within Flood Zone 2 (medium probability of flooding). It has also pointed out that the application was not accompanied by a Flood Risk

¹ I understand that, amongst other things, aquatic invertebrate communities are suffering the effects of hyper-eutrophication, caused by excessive levels of phosphates.

Assessment and no sequential test (aimed at steering new development to areas with the lowest risk of flooding) has been undertaken by the appellant.

29. I note the appellant's arguments that not all of the site is in Flood Zone 2, the caravans would be 600mm above existing ground level and would provide only temporary accommodation. However, both the development plan and the Framework require the application of the sequential test. Furthermore, even those sites which are used for short-let caravans are classed as 'more vulnerable' development for the purposes of assessing flood risk. The site could flood during the night when the caravans were being occupied, putting people (employees) at risk of danger.
30. It has not been demonstrated that there are no reasonably available sites appropriate for the development in areas with a lower risk of flooding. On the basis of the information before me, I am therefore led to find that there could be a more suitable site (lower risk of flooding) available. In the absence of a Flood Risk Assessment and application of the sequential test, occupiers of the caravans could be at unacceptable risk of flooding.
31. I conclude on the fifth main issue that the proposed development could have unacceptable flood risk implications and, in so doing, would conflict with the provisions of LP policy DP23.

Planning Balance/Overall Conclusion

32. My findings in respect of the first three main issues (local economy, townscape, and living conditions) do not outweigh or overcome the harm that I have identified in respect of the fourth and fifth main issues (potential adverse impact upon the Somerset Levels and Moors Ramsar Site and SPA, and the flood risk implications). Whilst the proposal would accord with some aspects of the development plan, it would conflict with other important LP policies and the provisions of the Framework when read as a whole. I therefore conclude, on balance, that the appeal should not succeed.

Neil Pope

Inspector

Application Reference	2022/1699/OUT
Site Address	Land at 376979 145064, Bulls Quarries Road, Tytherington, Frome
Applicant/Organisation	T Barney
Application Type	Outline Application Application for Outline Planning Permission with some matters reserved for change of use and 2no. travellers caravan pitches with details of access/landscaping/layout/scale. (part retrospective)
Decision	Refusal (Delegated)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	18.01.2024



Appeal Decision

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/E3335/W/23/3330385

Land to the west of Bulls Quarries Road, Tytherington, Frome

- 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 Ms Tammy Barney against the decision of Somerset Council.
 - The application Ref 2022/1699/OUT, dated 19 August 2022, was refused by notice dated 29 March 2023.
 - The development proposed is change of use to create 2no. gypsy caravan pitches, with associated works (outline application) (part retrospective)
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Ms Tammy Barney against Somerset Council. That application will be the subject of a separate Decision.

Preliminary Matters

3. The appeal was submitted against the refusal of permission by Mendip District Council, which since the submission of the appeal, has merged with other Councils to form Somerset Council. As a result, I have referred to Somerset Council in the banner heading above.
4. I have taken the description of the development from the application form, though the description in the Council's decision notice only adds that the outline form of the application submitted was made with detailed access, layout, landscaping and scale. Inferred in the absence from either description was that the matter of appearance was saved for future consideration.
5. The proposal is essentially for a change of use of land to residential purposes to allow for the siting of residential caravans. Within the submitted Design and Access Statement, it refers to the proposal also comprising 1 no. cabin, 1 no. stable block and 2 utility blocks. These buildings would be incidental to the change of use of the land and primary occupation of the site within the proposed 2 no static caravans. The static caravans proposed would not fall under the definition of buildings and are therefore, in themselves, not development.
6. Section 92 of the Town and Country Planning Act 1990 (TCPA) sets out that outline planning permission is capable of being granted for development consisting in or including the carrying out of building or other operations, subject to conditions to include the requirement to seek reserved matters consent. Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) makes it clear that

"outline planning permission" means a planning permission for the *erection of a building*, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters".

7. Neither Section 92 of the TCPA or the provisions of the DMPO make provision for a grant of outline planning permission for a material change of use of land. It is not possible, therefore, under the provisions of either the TCPA or DMPO, to grant outline planning permission for the fundamental component of the proposal for which permission is sought. Where caravans are proposed, their design and appearance cannot be controlled other than perhaps by condition to specify the maximum number permissible on the site and whether of the touring or static type. This is not the role of a reserved matters application.
8. Before reaching my conclusion above, I gave consideration as to whether it might be possible, to deal with the 4 no modest buildings (cabin, stables and utility blocks) under the outline application submitted. However, these fall under the *"associated works"*, i.e., associated with the material change of use. In my view, there would be no merit in considering these in isolation of the change of use of land to residential purposes and the occupation of the site, primarily within the static caravans. As such, I cannot properly assess the likely impact of the scheme under the application type submitted and the outcome of the appeal would have been the same.
9. Whilst the Council reached an alternative view about the validity of the application and considered that sufficient information was available to reach a decision, I have reached an alternative view. Any quashing of the Council's decision is beyond the powers available to me under an appeal pursuant to S78 of the Town and Country Planning Act 1990.
10. On the basis of the above, the appeal does not succeed.

H Nicholls

INSPECTOR

Application Reference	2022/2191/PAA
Site Address	Norwood Farm, Bath Road, Norton St Philip
Applicant/Organisation	J Dawson, Dyson Farming Limited
Application Type	Prior Approval Prior Approval for a proposed change of use of agricultural building to 4no. dwellinghouses (Class C3) and for associated operational development.
Decision	Refusal (Delegated)
Appeal Decision	Appeal Allowed
Appeal Decision Date	22.01.2024



Appeal Decision

Site visit made on 14 December 2023

by **Laura Cuthbert BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/Q3305/W/23/3322556

Norwood Farm, Bath Road, Norton St. Philip, Frome, Somerset BA2 7LP

- 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.
 - The appeal is made by Mr J Dawson of Dyson Farming Limited against the decision of Mendip District Council.
 - The application Ref 2022/2191/PAA, dated 2 November 2022, was refused by notice dated 29 December 2022.
 - The development proposed is change of use of barn to 4 dwellings.
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Decision

1. The appeal is allowed and prior approval is 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) (GPDO) for the change of use of barn to 4 dwellings at Norwood Farm, Bath Road, Norton St. Philip, Frome, Somerset BA2 7LP in accordance with the terms of the application, Ref 2022/2191/PAA, dated 2 November 2022, and the details submitted with it, including Drawing Nos 4024-001-Rev C-Site location plan, 4024-008-Rev E-Proposed site plan, 4024-010-Rev C -Proposed development plan, 4024-011-Rev C-Proposed dwelling types, 4024-015-Rev-B-Proposed elevations west and south, 4024-016-Rev B-Proposed elevations north and east, 4024-017-Rev D-Conversion diagram, pursuant to Article 3(1) and Schedule 2, Part 3, Class Q. The approval is subject to conditions set out by Paragraph Q.2(3) of Schedule 2, Part 3, Class Q of the GPDO in that development must be completed within a period of 3 years from the date of this decision as well as the provisions specified in paragraph W.

Preliminary Matter

2. The main parties have set out the relevant planning history related to the site, which includes a previous appeal decision¹. The proposal was for the change of use of the same barn to 5 dwellings under the provisions of Schedule 2, Part 3, Class Q(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). It was allowed. However, it did not include any building operations for consideration. I have had regard to this appeal decision insofar as it is relevant to the development before me now.

Main Issue

3. The main issue in this appeal is whether the proposed change of use constitutes permitted development pursuant to Schedule 2, Part 3, Class Q of the GPDO, having regard to the extent of the building operations proposed.

¹ APP/Q3305/W/20/3259921

Reasons

4. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Use Classes Order and any building operations reasonably necessary to convert the building.
5. Paragraph Q.1.(i) places restrictions on the building operations which can be undertaken. It states that development is not permitted if it would consist of building operations other than the installation or replacement of windows, doors, roofs, or exterior walls, or water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwellinghouse; and partial demolition to the extent reasonably necessary to carry out building operations, as listed above.
6. The Planning Practice Guidance (the PPG) provides further clarification, including that 'it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use, such that it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right'. The PPG also states that 'internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q'.
7. Neither the GPDO nor the PPG defines 'reasonably necessary'. Consequently, it is a matter of planning judgement based on the fact and degree of an individual case. My attention has been drawn to the Hibbitt² caselaw, which considered whether the works required to bring about the change of use amounted to a re-build or 'fresh' build as opposed to a conversion. Notably, this case reinforces that it is a matter of planning judgement as to the level of works involved that would still constitute a conversion.
8. The agricultural building in question consists of a modern, 3 bay portal framed style structure, with concrete columns and timber/steel rafters and timber purlins/plan bracing. The building is open at either end. The side elevations have blockwork on the lower half, with timber boarding on the upper half. The roof is cement-board roofing. The building is predominantly open, with a small internal division at the north-western corner. The existing frame of the building is supported on pad foundations.
9. The submitted 'Structural Engineers Report'³ indicates that the existing structural form and the main load bearing elements of the building would be suitable for the proposed conversion. The existing pad foundations would not be altered. An insulated solid floor would be required to support the internal partitions and for building regulations in order to make the dwellings habitable. There would be no structural issues with the introduction of the new solid floor. The Council has not provided any compelling evidence to the contrary.

² Hibbitt and Another v Secretary of State for Communities and Local Government and Rushcliffe Borough Council [2016] EWHC 2853 (Admin)

³ Prepared by E@M West Consulting Engineers, dated 27 September 2022.

10. Whilst the rooflights in the roof would be altered, the existing roof covering and structure would be retained, and below would be an insulated lining to improve the thermal performance of the building. An insulated timber frame cassette would be installed inside the existing structure and rainscreen. The open interior of the existing barn would also require subdivision to create the separate dwelling units and internal spaces within each dwelling.
11. It is unlikely that many existing agricultural buildings would be suitable for habitation as they stand without the introduction of insulation, dividing walls and heating to meet regulatory standards to make them suitable for human habitation. The existing barn is currently open at both ends so 2 new external walls with large, glazed panels would be installed in order for the building to function as a dwellinghouse. However, the installation of exterior walls falls under the scope of permitted development under Class Q. Furthermore, the elevational changes, including new doors and windows, would not go beyond those required for conversion, particularly given the extent of the original structure and rainscreen that would be retained. Additionally, the insulated timber frame would not amount to a 're-build' of the building.
12. Consequently, I am satisfied that, as a matter of planning judgement, the existing building would be capable of conversion and that the proposed building operations do not amount to a re-build, a 'fresh build', as they would not go beyond what could reasonably be considered to be a conversion. The works are considered as reasonably necessary for the building to function as a dwellinghouse, as outlined in criteria Q.1 (i)(i).
13. The Council has drawn my attention to another appeal decision in support of its case⁴. I have not been provided with the full details of this other decision. Consequently, I cannot draw any direct comparisons that would weigh in favour of or against the proposal. From the decision notice, it appears that this earlier proposal differs from the appeal proposal, as it involved the demolition of a 'large part' of the building whereas none of the building would be demolished under the proposal before me now. To my mind this only emphasises the need for the decision maker to exercise their individual planning judgement, based on the specific circumstances of the scheme before them.
14. Therefore, based on the evidence provided, I am satisfied that the proposal would constitute permitted development as set out under Schedule 2, Part 3, Class Q of the GPDO, having regard to the extent of the building operations proposed.

Other Matters

15. The conditions set out in paragraphs Q.2(1)(a) to (g) of Class Q relate to certain details of the proposed development, including transport and highways, noise, contamination, flooding, location or siting, design or external appearance, and the provision of adequate natural light in all habitable rooms. The Council raises no concerns in relation to the prior approval matters listed in paragraphs Q.2(1)(a) to (g). Given the above and based on the information before me and my observations on site, I have no reason to take a different view to the Council in respect of the above matters.

⁴ APP/Q3305/W/22/3299528

Conditions

16. The Council has not suggested any conditions. Any prior approval and planning permission granted for the development under Article 3(1) and Schedule 2, Part 3, Class Q of the GPDO is subject to the condition under Q.2 (3) which specifies that the development shall be completed within a period of 3 years starting with the prior approval date, as well as the provisions of paragraph W.
17. I have also listed the submitted plans in my decision and Paragraph W(12) of Schedule 2, Part 3 of the GPDO requires development to be carried out in accordance with the details submitted.

Conclusion

18. For the reasons given, I conclude that the appeal is allowed, and prior approval is granted.

Laura Cuthbert

INSPECTOR