



## Appeal Decision

Site visit made on 16 July 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **05 August 2024**

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**Appeal Ref: APP/E3335/W/24/3341854**

**Dollings Pool Dairy, Donyatt Hill, Donyatt, Ilminster, Somerset TA19 0RY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr A Aplin of Bickenhall Developments Ltd against the decision of Somerset Council.
  - The application Ref is 23/02906/S73A.
  - The application sought planning permission for the demolition of existing agricultural buildings and the erection of 6 No. dwellings with the formation of a new vehicular access there to, without complying with a condition attached to planning permission Ref 20/00126/FUL, dated 16 April 2020.
  - The condition in dispute is No 02 which states that:  
*The development hereby permitted shall be carried out in accordance with the following approved plans:*
    - Drawing no. Sht-12E received 16 December 2019*
    - Drawing no. Sht-09D received 12 March 2020*
    - Drawing no. Sht-08A received 12 March 2020*
    - Drawing no. Sht-07 received 16 December 2019*
    - Drawing no. Sht-06D received 16 December 2019*
    - Drawing no. Sht-05C received 16 December 2019*
    - Drawing no. Sht-04C received 12 March 2020 (marked under revision notes as Revision D - layout amended)*
    - Drawing no. Sht-03F received 12 March 2020*
  - The reason given for the condition is:  
*For the avoidance of doubt and in the interests of proper planning.*
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing agricultural buildings and the erection of 6 No. dwellings with the formation of a new vehicular access there to at Dollings Pool Dairy, Donyatt Hill, Donyatt, Ilminster, Somerset TA19 0RY in accordance with the application Ref 23/02906/S73A, without compliance with the conditions previously imposed on planning permission Ref dated 20/00126/FUL, dated 16 April 2020 but instead subject to the conditions set out in the Schedule attached to this decision.

### Applications for costs

2. An application for costs was made by Mr A Aplin of Bickenhall Developments Ltd against Somerset Council. This application is the subject of a separate Decision.

## **Background and Main Issue**

3. The previous planning permission ('the previous permission') sought the demolition of farm buildings, and the erection of four terraced units parallel to the A358 (plots 1 to 4), and two detached properties (plots 5 and 6). The dwellings would have been stone-faced. Also proposed was a separate garage building and parking area, a sewage pumping station and enclosure, and an internal access road. Work has commenced in that some of the farm buildings have been demolished.
4. It is now proposed to vary condition 2 of the previous permission to substitute revised plans. These would change the size of the dwellings, increasing their height and mass, and changing their finish to render. Plots 1 to 4 would be linked-detached dwellings, with on-plot garages. Based on the varied plans, the area previously proposed for parking and the pumping station would be free of built form. The layout of the access road would also change. The main issue is the effect of the proposal on the character and appearance of the area.

## **Reasons**

5. The site is at the edge of an existing cluster of dwellings and buildings along a steeply sloping section of the A358 at Donyatt Hill. Some of the stone farm buildings are still standing. The previous permission sought to acknowledge the historic use of the site by proposing modest, stone dwellings on its frontage. Compared with the approved scheme, the proposal before me would add to the spread of development within the site, as well as its overall height and mass, particularly of Plots 1 to 4.
6. However, in granting the previous permission, the Council has accepted that the site would evolve to have an overtly residential character. Dwellings in the area have a variety of designs. These include detached and semi-detached properties, and those with attached garages or other structures.
7. The use of single storey garages between the dwellings would help to break up the mass of the proposal. There are examples of dwellings with render close by. These include the adjacent former farmhouse, others fronting the A358 and dwellings nearby on Donyatt Hill. Therefore, although it would be more suburban in appearance than the previous permission, the proposal would not undermine any particular local distinctiveness. Nor would the use of render result in an incongruous appearance.
8. The site is prominent at the entrance to the village on the A358. Long distance views of the proposal would also be obtainable, for example from public footpaths in the wider countryside. However, in these views, the proposal would be seen in the context of the other dwellings and buildings, which give the area along the roadside a semi-rural and built-up appearance. Furthermore, from the east, Plots 1-4 would be partially screened by proposed Plots 5 and 6, about which the Council raises no concerns, as well as existing vegetation. Accordingly, the proposal and its greater mass and height would not appear particularly out of place including in the wider landscape.
9. For the reasons given above, the proposal would not harm the character and appearance of the area. As a result, it would comply with Policy EQ2 of the South Somerset Local Plan, adopted March 2015, which requires proposals to reinforce local distinctiveness and respect local context. It would also comply

with the requirements of the National Planning Policy Framework that the proposal is sympathetic to its surroundings.

### **Other Matters**

10. The Council has provided me with a copy of a letter from National Grid Transmission (NGT), requiring further assessment in respect of its assets. However, this was not a reason for refusal, or a suggested condition, and I have no substantive evidence to suggest that this matter cannot be resolved between the appellants and NGT.

### **Conditions**

11. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the previous permission, unless they have already been discharged. Work has commenced on site. As such, some conditions originally imposed need to be amended. The Council has provided a list of revised conditions and I have assessed and revised these where necessary, based on the advice of the PPG, and having sought comments from the parties. I have used the numbering of the previous permission for clarity.
12. The Council has suggested a condition stating that the new planning permission should start from the commencement of the use hereby approved. However, as development has already commenced, the permission should start from the date of my decision. I shall impose a condition confirming this. A condition requiring adherence to the amended plans is also necessary for certainty.
13. In the interests of the character and appearance of the area, a condition is necessary to ensure that development takes place in accordance with the approved external facing materials. As these are shown on the amended plans, there is no requirement for the further details sought by the original condition in this respect. For the same reason, a condition is necessary to ensure that the previously approved details of the means of enclosure are installed.
14. To mitigate against climate change, installation of renewable energy features should be secured by a condition. In the interests of the character and appearance of the area, details of landscaping and its implementation are required. The proposed changes would affect the previously approved landscaping arrangements and so a revised scheme is necessary. I have repeated conditions relating to the removal of permitted development rights for the same reasons as given on the previous permission.
15. The condition of the previous permission relating to a Traffic Regulation Order has already been removed and so is no longer necessary. For the same reasons as given on the previous permission, conditions are necessary in respect of the Construction Environmental Management Plan (CEMP), the access gradient, the surfacing of the access, estate road, footpaths, parking, turning spaces, visibility splays and surface water.
16. I understand that some of these details have been approved under the previous permission and/or under Highway legislation. However, the internal layout is different from the previous permission. As such, based on the information available to me, I am not satisfied that these conditions (other than in respect of the CEMP and surface water drainage) can simply refer back to the approved details. The previous permission required that the existing

access be permanently stopped up, for highway safety reasons. I have insufficient information to be confident that this would occur without the condition and so I have reimposed it.

17. For the same reasons as given in the previous permission, I have reimposed conditions relating to electric charging points, the use of garages, the provision of bicycle storage, external lighting, vegetation removal and building demolition, the Biodiversity Mitigation and Enhancement Plan and any unexpected contamination. These have been re-worded where necessary.
18. Given that hedgerow/vegetation remains on the site boundaries and may well be retained as shown in the previously approved landscaping plans, I have reimposed a condition requiring their protection. However, the construction area has little if any vegetation within it and so I see no reason to reimpose a condition relating to its clearance.

### **Conclusion**

19. For the reasons given above, I conclude that the appeal should succeed. I will grant a new planning permission subject to the conditions in the Schedule below.

*O Marigold*

INSPECTOR

## Schedule of Conditions

- 1) Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission (being granted under section 73A of the Act in respect of development already carried out) shall have effect from the date of this decision.
- 2) Development should commence in accordance with the following plans: PL250 Option v4A Site Layout PL1, PL206 House Types A&B Plots 1-4 Elevations PL2, PL207 Option 4A Plots 5&6 Ground Floor Plan PL1, PL208 Option 4A Plots 5&6 First Floor Plan PL1, PL209 Option 4A Plots 5&6 Roof Plan PL1, PL210 Option 4A Plots 5&6 Elevations PL1, PL211 Option 4A Plots 5&6 Elevations PL1, PL202 House Types A&B Plots 1-4 Ground Floor Plan PL2, PL203 House Types A&B Plots 1-4 First Floor Plan PL1, PL204 House Types A&B Plots 1-4 Roof Plan PL1, PL205 House Types A&B Plots 1-4 Dwelling & Garage sections PL1, PL206 House Types A&B Plots 1-4 Elevations PL2, J0014355 Sheet 05 Vehicle Swept Path Rev C, J0014355 Sheet 06 Visibility Splay Rev D.
- 3) The development hereby approved shall be carried out using the external materials identified on the approved plans.
- 4) The dwellings hereby approved shall not be occupied until the means of enclosure previously approved under 22/03144/DOC1 have been installed.
- 5) Each dwellinghouse hereby approved shall not be occupied until the renewable energy features (heat pumps, PV) shown on the approved plans have been fully installed for that respective dwelling.
- 6) No development of the proposal beyond base-course stage shall take place until a scheme of landscaping has been submitted to and approved in writing by the Local Planning Authority. All planting comprised in the approved scheme shall be carried out within the next dormant planting season (November to February inclusively) following the approval of the landscaping scheme. If any trees or shrubs which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased, they shall be replaced in the next planting season with trees/shrubs of the same approved specification, in the same location.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions to the terraced properties (units 1, 2, 3 and 4) hereby approved without the express grant of planning permission by the Local Planning Authority.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no development as specified within Schedule 2, Part 1, Class E of the GPDO erected within the curtilages to the west of the terraced properties (units 1, 2, 3 and 4) hereby approved without the express grant of planning permission by the Local Planning Authority.
- 9) Deleted.

- 10) The development hereby approved shall be carried out in accordance with the Construction Environmental Management Plan submitted and discharged under application 22/03144/DOC in relation to planning approval 20/00126/FUL.
- 11) The gradient of the proposed access shall not be steeper than 1 in 10. Once constructed the access shall thereafter be maintained in that condition at all times.
- 12) Before the dwellings hereby permitted are first occupied, a properly consolidated and surfaced access shall be constructed (not loose stone or gravel) details of which shall have been submitted to and approved in writing by the Local Planning Authority. The access shall be constructed in accordance with the agreed design and shall be maintained in the agreed form thereafter at all times.
- 13) The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
- 14) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
- 15) The dwellings hereby permitted shall not be occupied until the parking spaces for the dwellings have been provided as detailed on the approved layout. The parking spaces, access thereto and turning area shall be properly consolidated and surfaced and shall thereafter be kept clear of obstruction at all times and not used other than for the parking of vehicles or for the purpose of access.
- 16) The dwellings hereby permitted shall not be occupied until the existing access has been stopped-up and its use permanently abandoned in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority.
- 17) The development hereby approved shall be carried out in accordance with the surface water drainage details submitted and discharged under application 22/03144/DOC in relation to planning approval 20/00126/FUL.
- 18) At the proposed access there shall be no obstruction to visibility greater than 600 millimetres above adjoining road level within the visibility splays shown on the submitted plan (Drawing No: PL250 Option V4A Rev PL001). Such visibility splays shall be constructed prior to the commencement of base course level of the dwellings hereby permitted and shall thereafter be maintained at all times.

- 19) The dwellings hereby permitted shall not be occupied until one 16amp electric charging point, for electric vehicles, has been provided for each dwelling. Once installed, such electric charging points shall be retained and maintained in working order.
- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the use of the garages hereby permitted, as part of this development, shall not be used other than for the parking of domestic vehicles and not for further ancillary residential accommodation, business use or any other purpose whatsoever.
- 21) Prior to the first occupation of each dwellinghouse hereby approved, the secure bike stores as shown on the approved drawings shall be fully implemented.
- 22) Prior to occupation, a lighting design for bats, following Guidance note 8 - bats and artificial lighting (ILP and BCT 2018), shall be submitted to and approved in writing by the Local Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.
- 23) No vegetation removal works or building demolition works around the site shall take place between 1st March and 31st August inclusive in any calendar year, unless a competent ecologist has undertaken a careful, detailed check of the buildings and any trees, scrub, shrubs and tall ruderal vegetation to be cleared for active birds nests immediately before works proceed. No such works shall take place until written confirmation that no birds will be harmed and/or there are appropriate measures in place has been submitted to and approved in writing by the Local Planning Authority.
- 24) All trees and hedgerow retained will be protected during the works, including groundworks, by the establishment of Root Protection Areas in accordance with BS 5837:2012. No materials or plant should be allowed within the buffer zone.
- 25) Deleted.
- 26) The development shall be carried out in strict accordance with the Biodiversity Mitigation and Enhancement Plan (BMEP) submitted and approved under application 22/03144/DOC in relation to planning approval 20/00126/FUL. Photographs of the installed features shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the dwellings hereby approved.
- 27) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the Local Planning Authority. Development on

the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority.

**End of Schedule**