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## Appeal Decision

Site visit made on 17 September 2024

by **R Kent BA (Hons) MTP DipM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 February 2025

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**Appeal Ref: APP/E3335/W/24/3344586**

**Stokeford Farm, Stoney Stoke, Wincanton BA9 8HR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs Graham Swift and Sarah Beeny against the decision of Somerset Council.
  - The application Ref is 24/00353/HOU.
  - The development proposed is described as “extension and alteration of the existing farmhouse comprising a single storey timber clad extension (retrospective), the replacement of kitchen windows with French Doors and new window on eastern elevation, in addition to the construction of a first floor balcony.”
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### Decision

1. The appeal is dismissed.

### Background and Preliminary Matters

2. The site includes a farmhouse constructed in the 1970s and the appeal relates to a householder application for its extension and alteration as described on the planning application form. The description of the development in the heading above is taken from that form. It refers to the single storey extension being “retrospective,” which concurs with my observations on site. However, the other elements of the appeal scheme had not been carried out when I visited. Accordingly, I have made my decision on the basis of the submitted plans.
3. The appellants’ evidence includes a signed Unilateral Undertaking (‘UU’) dated 17 May 2024. I have had regard to the representations made about this, together with the other submissions made in relation to this appeal, in my decision.
4. In 2020 the Council granted planning permission for a new single dwelling to the north of the site<sup>1</sup> subject to a condition that the 1970s farmhouse and all associated garaging/outbuildings are demolished within 3 months of the occupation of the new dwelling. A similar requirement is imposed by a corresponding Section 106 legal agreement (S106). A subsequent application<sup>2</sup> to vary the permission was approved, but it is subject to a similar condition.
5. The new dwelling has subsequently been built and occupied. A Planning Contravention Notice has been served by the Council and related email correspondence between the appellants and the Council refer to an alleged breach of planning control arising from this. However, any enforcement action taken would stem from the permissions or S106 for the new dwelling and not the 1970s

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<sup>1</sup> LPA ref 19/01133/FUL

<sup>2</sup> LPA ref 20/00735/S73A

farmhouse. The potential for any enforcement action therefore is a separate matter to this appeal.

6. The appellants' Statement of Case indicates they consider that the householder application subject to this appeal is a route to "open discussions" about the retention of the 1970s farmhouse. However, the description on the planning application form was adopted by the Council in its newspaper notice, site notice and decision notice, none of which therefore made reference to the development including the retention of the farmhouse. Consequently, I cannot be certain that all interested parties are aware that the householder application potentially seeks its retention. Furthermore, any interested parties that chose not to comment on the application due to it ostensibly being for householder works would have no awareness that retention of the 1970s farmhouse is potentially being sought at appeal.
7. Moreover, the evidence refers to a separate application<sup>3</sup>, which specifically sought the retention of the 1970s farmhouse but was subsequently withdrawn. In my view interested parties could have reasonably assumed that the retention of the 1970s farmhouse was a separate matter to this householder scheme since there had been the separate application for its retention.
8. I have therefore determined the appeal on the basis that it is solely for the householder development set out on the planning application form. To do otherwise would potentially prejudice interested parties who did not make representations based on the published description of the development but may have submitted comments had it clearly included the retention of the 1970s farmhouse. Notwithstanding this, a decision on this basis would not prevent the Council considering whether enforcement action would be expedient in relation to the permissions or S106 relating to the new dwelling.
9. Although the Council accepted and consulted on the application on the basis it was only for householder development and the description on the decision notice reflects this, the Council suggests that the planning application does not meet the requirements for a householder application. It was however submitted on an application form clearly titled "Householder Application for Planning Permission for works or extension to a dwelling" and the description of the development on the form is for works which fall within the definition of a "householder application" as set out in Part 1 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. I am satisfied that the application was valid and am determining the appeal on that basis.
10. The Council's reasons for refusal related to the validity of the application and did not raise any express concerns specifically concerning the householder works, such as its effect on the character and appearance of the area. However, the appellants' letter dated 12 February 2024 and the Council's Officer Report refer to a survey having been carried out in March 2023 which confirms that there are bat roosts in the farmhouse.
11. A copy of the appellants' Ecology Report dated March 2023 relating to several buildings in the vicinity of the site, including the 1970s farmhouse, was therefore submitted at my request after the appeal was lodged. The report refers to the conservation status and legal protection afforded to bats and the requirement for a

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<sup>3</sup> LPA ref 23/01156/OUT

Natural England bat mitigation licence should any future works affect the roof of the farmhouse.

12. The parties have commented on the application of Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations), which require that regard is given to the requirements of the Habitats Directive (92/43/EEC). In particular, this means I must consider whether bats would be affected by the development, whether a bat mitigation licence would need to be sought from Natural England and, if so, whether one is likely to be issued.

### **Main issue**

13. Against this background, the main issue is the effect of the development on bats.

### **Reasons**

14. Policy EQ4 of the South Somerset Local Plan 2015 (SSLP) requires, amongst other things, that development protects the biodiversity value of buildings. A sequential approach should be taken to avoid, lessen and compensate effects on protected species.
15. The Ecology Report identified evidence of serotine and pipistrelle bats within the loft space of the farmhouse and its garage. It also identified several potential roost features on all elevations, comprised of loose or missing tiles and holes in the soffit box and brick work.
16. Notwithstanding the Ecology Report, the appellants do not consider that the proposed balcony and windows would have a negative impact on bats and a bat mitigation licence is therefore not required. However, the Council does not agree, pointing to the works to create the windows and balcony potentially causing disturbance to the bat roost through effects such as noise, vibration and light. In its view, a licence is likely to be required.
17. The works to the south east elevation include the erection of a balcony and the enlargement of the existing dormer window to create a full height door serving the balcony. This would entail works to the existing wall at a height in close proximity to the eaves. The alterations at ground floor level to enlarge existing window openings, would require the removal of small sections of the existing wall beneath the windows at the south western end of the building where bat droppings had been identified in the roof space above. It is likely that the works to enlarge the openings and build the balcony would cause noise and vibration as identified by the Council. This would have the potential to adversely affect the bats. The evidence does not demonstrate how the works could be carried out without adversely affecting the bats. Nor does it include proposals to mitigate the potential effects on bats from the works. Applying a precautionary approach, I therefore cannot be satisfied that the development would not have an adverse effect on the protected species.
18. The Habitats Regulations require that three derogation tests must be passed for a licence to be issued. Having regard to the tests, the appeal scheme is to alter and extend a private dwelling for the benefit of the appellants. I have seen no convincing evidence that the scheme is of overriding public interest. The alternative to enlarging the windows and creating a balcony would be to retain the windows in their current form. I see no reason why this would not be a satisfactory alternative to the proposed alterations. On the basis of the evidence before me, I am not convinced that the

works to implement the scheme would not harm the long-term conservation status of the species. I therefore cannot be confident that a licence would be granted.

19. I have given careful consideration to whether a condition, such as that suggested by the Council, could be imposed to prevent further development until a licence has been issued. However, given my findings on the derogation tests I do not consider that such a condition would be reasonable.
20. For the reasons given, on the evidence before me I cannot conclude that the development would not adversely affect bats. It would therefore conflict with SSLP policy EQ4 which seeks to safeguard protected species.

### **Other Matters**

21. The Council refers to policies SS1 and SS2 of the SSLP. These are strategic policies relating to the settlement strategy and development in rural settlements. As the appeal scheme would not result in an increase in dwellings those policies are not directly relevant to the scheme as I have considered it.
22. The UU seeks to retain the farmhouse by foregoing one of the conversions of the nearby agricultural buildings permitted under Class Q of Part 3, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It does not directly relate to the development subject to this appeal and is not necessary to make the development acceptable in planning terms. Nor does it overcome the main issue identified above. As a consequence, it does not meet the tests for obligations set out in the National Planning Policy Framework.

### **Conclusion**

23. The appeal scheme conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given the appeal should be dismissed.

*R Kent*

INSPECTOR