

APPEAL DECISIONS –14 OCTOBER 2021

Site: BROOK VIEW, TUDOR PARK, PRIORSWOOD, TAUNTON, TA2 8TD

Proposal: Variation of Condition No. 04 (landscaping) of application 08/17/0037 at Brook View, Tudor Park, Cheddon Fitzpaine

Application number: 08/21/0002

Reason for refusal: Dismissed

Original Decision: Delegated Decision – Refused



The Planning Inspectorate

Appeal Decision

Site visit made on 10 August 2021 by **S D Castle BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal Ref: APP/W3330/W/21/3273767 Brook View, Tudor Park, Cheddon Fitzpaine, Taunton, Somerset

- 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 Glenmill Homes Ltd against the decision of Somerset West and Taunton Council.
 - The application Ref 08/21/0002, dated 18 January 2021, was refused by notice dated 01 April 2021.
 - The application sought planning permission for variation of conditions no 02 (approved plans), 5 (landscaping), 6 (boundary treatment), and 12 (parking detail) and removal of condition no 7 (Protection of hedges) of application 08/14/0020 at Brook View, Tudor Park, Cheddon Fitzpaine without complying with a condition attached to planning permission Ref 08/17/0037, dated 25 June 2018.
 - The condition in dispute is no 4 which states that: (i) The landscaping/planting scheme and dry pond shown on the submitted plan (5403/116) shall be completely carried out within the first month of the first available planting season from the date of issue of this decision notice. (ii) For a period of five years after the completion of the landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow, shall be replaced by trees or shrubs of similar size and species or other appropriate trees or shrubs as may be approved in writing by the Local Planning Authority. (iii) The dry pond shall be kept clear of any trees and/or shrubs and be grassed over only.
 - The reason given for the condition is: To ensure that the proposed development does not harm the character and appearance of the area in accordance with Policy DM1 of the Taunton Deane Core Strategy and in order to accord with the Environment Agency's requirements in relation to development in the flood plain.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2019 Taunton Deane Borough Council merged with West Somerset Council to become Somerset West and Taunton Council. The development plans for the merged local planning authority remain in place for the former area of Taunton Deane Borough Council until such a time as they are revoked or replaced. It is therefore necessary to determine this appeal with reference to policies set out in the plans produced by the now dissolved Taunton Deane Borough Council.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the Council had determined the application. I am required to consider this appeal based on the current Framework. From reading all the information before me from the Appellant and the Council, I am satisfied that the revised Framework carries forward the main policy areas from the earlier Framework, as relevant to this appeal. As such, it is not necessary to revert to the parties further.

Background

4. Permission was granted in 2013¹ for the erection of a detached dwelling with associated access at Brook View. That development has been subsequently amended by a number of different applications, including permission ref: 08/17/0037, granted 25 June 2018, and referred to in the banner heading above. This appeal relates to the variation of the landscaping condition attached to 08/17/0037 and seeks omission of the tree planting within the area labelled as an orchard on the approved site plan (dwg no 5403/116).

Main Issues

5. The main issues are the effect of the development on the character, appearance and biodiversity of the site and surrounding area.

Reasons

6. The tree planting subject to this appeal is located on a wedge-shaped area of land bounded by the curving A3259 to the north and west, the fenced rear garden of the dwelling at Brook View to the east, and a mature tree belt along its southern boundary with the dwellings on Barbers Mead. The area of tree planting is clearly visible in public views taken from the A3259, both to motorists and pedestrians. The overall landscaping scheme includes a planted raised bank along the site's boundary with the A3259. At the time of my site visit, planting of the raised bank and orchard had already taken place. That planting was, however, in its early stages of establishment.
7. The character of the surrounding area is strongly verdant in appearance, owing to the substantial areas of landscaping to the front of the recently constructed estate opposite the site, in combination with the substantial mature hedges and trees along the boundary to the A3259. Given the early stage of the planting associated with 08/17/0037, the rear elevation and high rear garden fence of Brook View are

prominent in the street scene in stark contrast to the surrounding verdant landscaping and dwelling frontages of the housing estate opposite.

8. As the landscaping on the site matures, it will be highly visible within the street scene and will make a positive contribution to the visual amenities and verdant character of the appeal site and the wider surrounding area. Whilst mature boundary planting will reduce the visibility of the orchard trees, the orchard provides an intrinsically valuable green buffer between the highway and the adjacent residential development. Such green buffers and their trees are characteristic of the surrounding area. As such, the loss of the trees would erode the verdant character of the site and harm the prevailing verdant character of the area.

¹ LPA ref: 08/12/ 0027

9. The Council's reason for refusal also raises concerns regarding the impact of the proposal on wildlife and their habitats. The appellant has not provided any substantive information regarding the impact of the proposal on biodiversity. Trees provide important wildlife habitat and I therefore find that insufficient information has been provided to demonstrate that there would be no unacceptable harm to the biodiversity interests of the site.
10. The appellant has not provided details of any substantive benefits of the proposal and I am mindful of the support within the Framework at paragraph 131 for the role trees play in mitigating climate change. There is no substantive evidence to indicate that there is a significant probability that the trees will be removed at a future date.
11. I have had regard to the concerns of interested parties, including the effect of the proposal on the living conditions of the occupants of Brook View, but none add to my reasons for dismissing the appeal.
12. Overall, the proposal would result in a loss of landscaping that would be harmful to the character and appearance of the area. Furthermore, it has not been demonstrated that there would be no unacceptable harm to the biodiversity interests of the site. As such the proposal would be contrary to Policies DM1, CP8 and CP1 of the adopted Taunton Deane Core Strategy (2012), and Policies ENV1, ENV2 and D7 of the Taunton Deane adopted Site Allocations and Development Management Plan (2016). These policies, taken together, amongst other things, seek the conservation and enhancement of the natural environment, prevention of unacceptable harm to the character of affected areas, and the planting of trees within new developments where this would benefit biodiversity and enhance landscape. The proposal would also conflict with Framework paragraphs 130 and 131 which require development to be sympathetic to local character and to incorporate trees.

Conclusion

13. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations (including the Framework) indicate otherwise. There are no material considerations, either individually or in combination, of sufficient weight to outweigh the identified conflict with the development plan.
14. For the reasons above, the appeal is dismissed.

S D Castle

INSPECTOR

Site: LAND TO THE WEST OF BROOK VIEW, TUDOR PARK, PRIORSWOOD, TAUNTON, TA2 8TD

Proposal: Erection of 1 No. single storey dwelling with detached garage on land to the west of Brook View, Tudor Park, Maidenbrook

Application number: 08/20/0006

Reason for refusal: Dismissed

Original Decision: Delegated Decision – Refused



The Planning Inspectorate

Appeal Decision

Site visit made on 10 August 2021 by **S D Castle BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal Ref: APP/W3330/W/21/3268170 Land to the west of Brook View, Tudor Park, Taunton, Somerset

- 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 Glenmill Homes against the decision of Somerset West and Taunton Council.
 - The application Ref 08/20/0006, dated 20 February 2020, was refused by notice dated 17 August 2020.
 - The development proposed is erection of single storey dwelling and garage thereto.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2019 Taunton Deane Borough Council merged with West Somerset Council to become Somerset West and Taunton Council. The development plans for the merged local planning authority remain in place for the former area of Taunton Deane Borough Council until such a time as they are revoked or replaced. It is therefore necessary to determine this appeal with reference to policies set out in the plans produced by the now dissolved Taunton Deane Borough Council.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the Council had determined the application. I am

required to consider this appeal based on the current Framework. From reading all the information before me from the Appellant and the Council, I am satisfied that the revised Framework carries forward the main policy areas from the earlier Framework, as relevant to this appeal. As such, it is not necessary to revert to the parties further.

Main Issues

4. The main issues are the effects of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of future occupiers of the development and on the occupiers of Brook View; and,
 - Ecology and biodiversity.

Reasons

Character and Appearance

5. The proposed dwelling would be located on a wedge-shaped area of land that is bounded by the curving A3259 to the north and west, the rear garden of the dwelling at Brook View to the east, and a mature tree belt to the south that separates the site from the rear gardens of dwellings on Barbers Mead. Access to the dwelling would be achieved by extending the existing drive to the north of Brook View.
6. The site is currently an area of tree planting (orchard) that is clearly visible in public views taken from the A3259, both to motorists and pedestrians. The boundary with the A3259 comprises a raised bank that has recently been planted with trees and hedgerow vegetation. At the time of my site visit, the planting of the raised bank and the orchard were both in the early stages of establishment.
7. There are a variety of nearby dwelling types, including both new build dwellings such as Brook View, and local vernacular rural buildings, such as Maidenbrook Farmhouse and The Stables. The character of the surrounding area is, however, spacious and verdant, owing to the substantial areas of landscaping and mature boundary vegetation adjacent to the A3259. As the existing landscaping on the site matures, it will be highly visible within the street scene and will make a positive contribution to the visual amenities and verdant character of the appeal site and the wider surrounding area.
8. Whilst the proposed dwelling would be single storey, it would be in close proximity to the A3259 and would result in the loss of a substantial area of landscaping adjacent to the A3259. The road facing elevation lacks interest and the shallow hipped roof would not integrate with the gable roof forms of surrounding dwellings. The lack of space to the front and rear of the dwelling would result in the dwelling appearing cramped on its plot.
9. I acknowledge that the visual impact of the dwelling would decrease as the highway boundary planting matures. Nevertheless, the proposal would result in the loss of an intrinsically valuable green buffer between the highway and the adjacent residential development. The dwelling would be an incongruous and cramped form of development that would detract from the quality of the street scene and fail to integrate with the prevailing verdant character of the area.
10. As such, the proposal would be harmful to the character and appearance of the area contrary to Policies DM1 and CP8 of the Taunton Deane Core Strategy (2012) (CS), and Policy ENV1 of Taunton Deane adopted Site Allocations and Development

Management Plan (2016). These policies, taken together, amongst other things, seek to conserve and enhance the natural environment, minimise the impact on trees and prevent unacceptable harm to the character of affected areas. The proposal would also conflict with Framework paragraphs 130 and 131 which require development to be sympathetic to local character and to retain trees where possible.

Living Conditions

11. The proposed dwelling and its garage would be adjacent to the rear garden of Brook View. The Council is concerned that the proposal would result in an unacceptable impact on the living conditions of the occupants of Brook View by virtue of it appearing visually obtrusive; through the loss of garden space; and due to noise generated by future occupants of the proposed dwelling using the access. I am not persuaded by the Council in these regards. The proposal is single storey and accommodates 2-bedrooms. As such, it will not appear overbearing given its separation distance from the facing windows in Brook View and the existing high closed boarded boundary fence. Furthermore, it would generate only a limited number of vehicular movements that would not materially affect noise levels given the proximity of the A3259. The fenced rear garden to Brook View is of sufficient scale for the range of activities usually associated with a family dwelling.
12. The appellant advises that the nearest first floor window of Brook View to the proposed dwelling's rear garden is 18.8m away. This is a sufficient distance to avoid unacceptable overlooking or loss of privacy.
13. It is not clear from the Council's statement or refusal reasons what requirements of the listed policies it finds the proposal's impact on living conditions to conflict with. I have not found conflict with the policies listed in the refusal reasons with regards to the specific issue of living conditions.

Ecology and Biodiversity

14. The Council's reason for refusal also raises concerns regarding the impact of the proposal on wildlife and their habitats. The appellant has submitted a Preliminary Ecological Appraisal Update (PEA) and the Council's Ecologist has not objected to the proposals subject to conditions. The proposal would, however, result in the loss of the orchard trees and their contribution to wildlife habitat. The PEA does not address the impact of the loss of the orchard and I therefore find that insufficient information has been provided to demonstrate that there would be no unacceptable harm to the biodiversity interests of the site. The proposal is therefore contrary to CS Policy CP 8 which requires development to conserve and enhance the natural environment, mitigating, and where necessary compensating for, adverse impact on important habitats and natural networks.

Other Matters

15. The site is linked to the Somerset Levels and Moors Ramsar Site and Special Protection Area (SPA) hydrological catchment. There is potential for significant effects on these protected sites due to increases in nutrients as a result of foul and surface water discharges from the proposed dwelling. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to approve planning permission. Thus, given my overall conclusion on the main issues it has not been necessary for me to pursue this matter any further.

16. I have also had regard to other matters raised by interested parties. As I am dismissing the appeal on the main issues, I have not addressed those matters further.
17. Although the Framework supports development that makes efficient use of land, this needs to take into account the desirability of maintaining an area's prevailing character and setting. This is not the case here, based on the harm I have identified with regard to the character and appearance of the area. There is no substantive evidence to indicate that there is a significant probability that the orchard trees will be removed at a future date.
18. The proposal would result in some economic and social benefits, including through the dwellings' construction and as a result of a slight increase in spending and patronage of services in the local area. The proposal would also make a limited contribution to the Government's objective of significantly boosting the supply of homes in a location with good access to services. I am aware of the importance of windfall housing and that housing targets should not be considered as a cap on the delivery of housing. However, as the proposal is for only a single dwelling, the benefits identified attract limited weight.

Conclusion

19. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations (including the Framework) indicate otherwise. There are no material considerations, either individually or in combination, of sufficient weight to outweigh the identified conflict with the development plan.
20. For the reasons above, the appeal is dismissed.

S D Castle

INSPECTOR

Site: The Spice Merchant, 14 Market Street, Watchet, TA23 0AN

Proposal: Erection of a storage building ancillary to the restaurant (retention of works already undertaken) (resubmission of 3/37/20/012)

Application number: 3/37/20/024

Reason for refusal: Allowed

Original Decision: Delegated Decision – Refused



The Planning Inspectorate

Appeal Decision

Site Visit made on 20 July 2021 by **Nick Davies BSc(Hons)**

BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Appeal Ref: APP/W3330/W/21/3269771 The Spice Merchant, 14 Market Street, Watchet TA23 0AN

- 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 Afsar Uddin (The Spice Merchant) against the decision of Somerset West and Taunton Council.
 - The application Ref 3/37/20/024, dated 8 December 2020, was refused by notice dated 1 February 2021.
 - The development proposed is the erection of a storage building ancillary to the restaurant.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a storage building ancillary to the restaurant at The Spice Merchant, 14 Market Street, Watchet TA23 0AN in accordance with the terms of the application, Ref 3/37/20/024, dated 8 December 2020, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 028/20/001 – Location Plan; 028/20/002 – Existing Site Plan; 028/20/003 Rev A – Existing Elevations and Floor Plan; 028/20/004

- Pre-Existing Elevations and Floor Plan; 028/20/005 Rev SB – Proposed Elevations and Floor Plan.
- 2) The building shall be modified in accordance with the details shown on Drawing No 028/20/005 Rev SB, including the replacement of the plasticol finish with render, and the removal of the three windows in the west elevation, within 3 months of the date of this decision.

Preliminary Matters

- 2. The building has already been erected, so I am dealing with this appeal retrospectively.
- 3. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Both parties have been given the opportunity to make comments relating to the updated Framework.

Main Issue

- 4. The main issue is whether the proposal preserves or enhances the character or appearance of the Watchet Conservation Area.

Reasons

- 5. The site lies within the Watchet Conservation Area (the CA), which includes the historic town centre and harbour. I have not been provided with a Conservation Area Character Appraisal, but the evidence, including my visit, indicates that the CA derives its special interest from its historic pattern of streets, lined with traditional buildings of modest scale and fine architectural details. The historic layout is closely associated with the harbour, which was central to the development of the town. Iron ore from the Brendon Hills was transported to the town via the historic Mineral Line, before being shipped to Ebbw Vale for smelting. Although the railway no longer exists, its historic imprint survives in the remaining buildings near the Western Quay.
- 6. The main building on the appeal site is in use as a restaurant, and is a twingabled structure that faces the harbour. It was originally part of the goods sheds associated with the railway. Although it has been much altered, its historic provenance is still discernible in its relationship with the former station building opposite, which has a large clock on its external wall, and retains its historic functional appearance. The juxtaposition of the historic buildings, either side of the route of the former railway, and close to its termination at the harbour, is an important remnant of the town's history and makes a positive contribution to the significance of the CA.
- 7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
- 8. The storage building has been constructed in the yard to the rear of the restaurant. As it is single storey, flat-roofed, and partially tucked behind the two-storey frontage buildings, it is not particularly prominent from public viewpoints. Furthermore, the yard is surrounded by a high boundary fence, so only the upper part of the structure is visible from outside the site. However, it is clad in black plastic-coated sheeting, which has a shiny appearance, giving it a rather industrial character. Together with its flat-roofed design, the overall appearance is somewhat akin to a portable cabin, rather than a permanent building. It is, therefore, out of character with the adjacent historic buildings, and harmful to the appearance of the CA. In view of its limited

visibility, the harm to the heritage asset is less than substantial within the meaning of paragraph 199 of the Framework.

9. The proposal involves modifications to the building, whereby the plastic-coated sheeting would be replaced with a rendered finish, and the three high-level windows in the west elevation would be removed. The proposed render finish would match the external materials of many of the surrounding buildings, including the lower part of the restaurant, and the former station building directly opposite. Furthermore, render is a predominant external material in the wider CA, so the modified building would sit more comfortably in its surroundings than is currently the case.

10. The flat roof would be retained, and would mirror the flat-roofed single storey projections to the rear of the former station building on the opposite side of the lane. It would also be closely associated with the single and two-storey flatroofed additions at the rear of the adjoining building to the west. Its form would not, therefore, be incongruous in this setting. The resultant low-profile of the building would limit its visibility above the surrounding boundary fence, and would ensure that, when viewed from Market Street to the north, the two historic railway buildings would retain their dominance in the street scene. As a result of its much smaller scale, and its position behind the frontage buildings, the storage building would visually recede into the background.

11. The building would also be viewed against the backdrop of rising land to the south west, which lies outside the CA and accommodates buildings that have no historic or architectural interest. Furthermore, it would be closely associated with the commercial paraphernalia in the yard area to the rear of the adjacent workshop, as well as a range of utilitarian garages, which are accessed off the lane to the south. In its modified form, the building would not be a prominent addition to this melange of small-scale and unremarkable structures that form the backdrop to the historic buildings. Consequently, it would not alter their predominance in the street scene, or the positive contribution that they make to the significance of the CA.

12. For these reasons, I conclude that the modified building would have a neutral impact on the CA, thereby preserving its character and appearance. The proposal would, therefore, comply with Policies NH1, NH2, NH13 and WA1 of the West Somerset Local Plan to 2032 (Adopted 2016), which, amongst other aims, seek to ensure that development proposals which affect the CA should preserve or enhance its character or appearance and make a positive contribution to the local environment. It would also accord with the Framework's aim to conserve and enhance the historic environment. Conditions

13. As the building has already been constructed, a condition limiting the period within which the development must commence is not necessary. I have imposed a condition specifying the relevant plans, as this provides certainty for all parties. As the modifications to the building are necessary to remedy the existing less than substantial harm to the CA, I have imposed a condition requiring them to be carried out within a set timescale.

Conclusion

14. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Site: ALLERMOOR BARN, STATHE ROAD, STATHE, BRIDGWATER,
TAUNTON, TA7 0JN

Proposal: Extension and conversion of garage/outbuilding to 2 No. self-contained annexes at Allermoor Barn, Stathe Road, Stathe (resubmission of 51/19/0014)

Application number: 51/20/006

Reason for refusal: Dismissed

Original Decision: Chair – Refused



The Planning Inspectorate

Appeal Decision

Site visit made on 31 August 2021 by **C Cresswell BSc**

(Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Appeal Ref: APP/W3330/D/21/3269428 Allermoor Barn, Stathe Road, Stathe, Bridgwater TA7 0JN

- 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 Jones against the decision of Somerset West and Taunton Council.
 - The application Ref 51/20/0006, dated 17 July 2020, was refused by notice dated 30 November 2020.
 - The development proposed is conversion of garage/outbuilding to two annexes.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:

- whether the proposed annexe would comply with polices which seek to manage the risk of flooding.
- whether the proposed annexe would be ancillary to the host dwelling.

Reasons

Flooding

3. The Framework¹ says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Where development is necessary in such areas, it should be made safe for its lifetime without increasing flood risk elsewhere. In order to achieve this, the Framework requires proposals for certain types of development to pass both the 'sequential test' and the 'exceptions test'.
4. Paragraph 168 of the Framework advises that planning applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments as set out in footnote 55. The footnote makes it clear that a site-specific flood risk assessment should be provided for all development which is located in Flood Zones 2 and 3.

¹ National Planning Policy Framework, Ministry of Housing Communities and Local Government,

20 July 2021.

5. Allermoor Barn is situated within Flood Zone 3. Therefore, even if I were to accept that the proposal would constitute minor development and should not be subject to the sequential or exceptions tests, there would still be a need to provide an appropriate site-specific flood risk assessment.
6. The flood risk assessment provided by the appellant says that there are flood defences in place and that there is no recent history of the site being flooded. Amongst other things, it indicates that the proposed annexe would be higher than surrounding dwellings and that the floor level would be raised by an additional 200mm. Further information is provided about an automatic pumping system that is already installed on the site. It is stated that a flood risk assessment was previously carried out on the site in 2011 and there is an extract of correspondence with the Environment Agency from 2018 which recommends using flood resilient construction practices. The appellant's appeal statement goes on to describe how occupiers of the annexe would achieve safe refuge in the event of a flood and says that the appellant would sign up to the Environment Agency early warning system.
7. Although this goes some way to explaining how the proposed development would address flood risk, many of the assertions made within the flood risk assessment are not backed with a great deal of technical evidence. I am aware that the Planning Practice Guidance¹ advises that the level of detail that needs to be provided in a site-specific flood risk assessment should be proportionate to the scale of development. However, while the proposal concerns a relatively small building, it is nonetheless situated in Flood Zone 3 (a zone which is classified as having a high risk of flooding) and would provide self-contained accommodation for a number of potentially elderly residents. In recognition of this, and the particularly strong emphasis placed on flooding in government policy, the proposal requires an appropriate level of scrutiny.
8. A comparison of the information provided by the appellant and the advice contained with the Planning Practice Guidance in relation to site-specific flood risk assessments (including the checklist) leads me to conclude that there are a number of unanswered questions. For instance, the evidence does not clearly discount the possibility of the

¹ Planning Practice Guidance, Ministry of Housing Communities and Local Government.

development increasing flood risk elsewhere in the vicinity. In the absence of such information, I am unable to verify with sufficient certainty that the annexe would comply with the criteria set out in Paragraph 167 of the Framework, which govern whether or not development should be permitted within the flood zone. For similar reasons, I am also unable to determine that the development would comply with Policy CP8 of the Core Strategy² which also seeks to manage flood risk.

9. I therefore conclude on this issue that the proposal does not demonstrate compliance with policies which seek to manage the risk of flooding.

Whether ancillary

10. Policy D6 of the SADMP³ says that the conversion of an appropriate building within the curtilage of a dwelling for ancillary accommodation will be permitted. The policy goes on to specify five criteria (A-E) which apply to the erection of new buildings within the curtilage of a dwelling for ancillary use. However, as the proposal is to convert an existing outbuilding rather than construct a new one, these criteria are not directly applicable in this case.
11. Nonetheless, it is still necessary to ensure that the proposal would constitute 'ancillary accommodation' as permitted by Policy D6 and would not amount to a new dwelling in the countryside (which would need to be assessed against a different set of policies including Policy DM2 of the Core Strategy). With this in mind, I note that Allermoor Barn occupies a very spacious plot of land which benefits from a particularly long road frontage. Due to the size and shape of the plot and the linear arrangement of buildings on the site, the host dwelling would be well separated from the proposed annexe. Considering that the annexe would have its own gated access onto the road and would contain facilities necessary for day-to-day living, I have little doubt that it would be physically capable of being occupied as a self-contained dwelling entirely independent of Allermoor Barn.
12. However, the development before me in this appeal is a residential annexe and not an independent dwelling. Although the building would be quite sizeable for an annexe, it would be notably smaller than the host dwelling and would share private garden space with it. Furthermore, there is little to substantiate the Council's claim that the annexe would occupy a different curtilage than the host dwelling. While the annexe would contain facilities for day-to-day living, it does not necessarily follow that a separate planning unit would be created.
13. Overall, it seems to me that the development would be capable of being used for the intended ancillary use. If planning permission was granted and the building was not used as proposed, or there was a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required and there would be a risk of enforcement action if such permission were not granted.
14. This leads me to conclude on this issue that the proposed annexe would be ancillary to the host dwelling. For the reasons given above, the development would comply with Policy D6 of the SADMP. As I have found that the proposed development would result in a residential annexe (rather than a new dwelling in the countryside) Policy DM2 of the Core Strategy is of somewhat less relevance in this particular case.

² Taunton Deane Borough Council Adopted Core Strategy 2011-2028.

³ Taunton Deane Adopted Site Allocations and Development Management Plan 2016.

Other Matters

15. I am mindful that the proposed annexe would provide accommodation for family members and, in this regard, would contribute to the social objectives of sustainable development as outlined in the Framework. However, the annexe is for permanent development that would outlast any personal needs of this nature. It is therefore important to ensure that new accommodation on the site takes account of flood risk. Hence, while I sympathise with the appellant in wishing to provide accommodation for elderly members of his family, this is not sufficient to outweigh my concerns in respect of flooding.
16. The Council's reasons for refusal say that the development could adversely impact upon the Somerset Levels and Moors Ramsar Site by adding to the concentration of phosphates in the area. In response, the appellant has proposed mitigation measures. However, as I am dismissing the appeal for other reasons, I have not considered this matter any further.

Conclusion

17. Although I have found the proposal to be acceptable with regard to ancillary use, it has not been sufficiently demonstrated that the development would comply with policies which seek to manage flood risk.
18. The appeal is therefore dismissed.

C Cresswell INSPECTOR

Site: BROOK VIEW, TUDOR PARK, PRIORSWOOD, TAUNTON, TA2 8TD

Proposal: Land off Shurton Lane, Stogursey

Application number: 3/32/20/003

Reason for refusal: Allowed – Appeal
Allowed - Costs

Original Decision: Chair – Refused



Appeal Decision

Hearing Held on 3 August 2021

Site visit made on 5 August 2021 **by**

Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Appeal Ref: APP/W3330/W/21/3272670

Land off Shurton Lane, Stogursey, TA5 1RW

- 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 Land Allocation Ltd against the decision of Somerset West and Taunton.
- The application Ref 3/32/20/003, dated 9 January 2020, was refused by notice dated 9 October 2020.
- The development proposed is outline application with all matters reserved except for access for a residential development of up to 27 No. dwellings (resubmission of 3/32/19/011).

Decision

1. The appeal is allowed and planning permission is granted for outline application with all matters reserved except for access for a residential development of up to 27 No. dwellings (resubmission of 3/32/19/011) at Land off Shurton Lane, Stogursey, TA5 1RW, in accordance with the terms of the application, Ref 3/32/20/003, dated 9 January 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The application was made in outline form with all matters saved for access reserved for future consideration. Consequently, all plans pertaining to the layout of the site have been treated as purely indicative.
3. During the course of the appeal application, the proposed number of dwellings was reduced from a maximum of 32 to 'up to 27 no. dwellings'. I have taken the description of development from the Council's decision notice to reflect this change and took account of the parties' reasoning behind the change.

4. The National Planning Policy Framework (the Framework) was revised in July 2021. Though the submitted evidence of the parties was based on the superseded version of the Framework, the changes of relevance were discussed during the hearing and the views of the parties were taken into account in reaching my decision.
5. A Unilateral Undertaking (UU) made as a deed under Section 106 of the Town and Country Planning Act 1990, executed on 22 June 2021, was submitted prior to the hearing. The Council confirmed in writing that the UU addressed the reasons for refusal (RfR) relating to the absence of affordable housing (RfR 2), children's play space (RfR 3) and a travel plan (RfR 4). As such, I have considered the appeal on the basis of the single outstanding reason for refusal.

Application for costs

6. An application for costs was made by Land Allocation Ltd against Somerset West and Taunton. This application is the subject of a separate Decision.

Main Issue

7. The single main issue is whether the site would provide an appropriate location for the development, having regard to local and national planning policies relating to the location for new development.

Reasons

8. This appeal follows an earlier scheme on the same site which was dismissed on 29 March 2021 following an appeal against non-determination⁴. That scheme was based on an outline application for up to 70 houses.
9. The current scheme is for a much reduced scale of up to 27 houses. The figure of 27 is allegedly based on discussions between the appellant and Council on the likely acceptable scale of increase of the settlement of Stogursey up to 2032 based on Policy SC1 of the West Somerset Local Plan 2015 (WSLP).
10. Under the WSLP, Stogursey is defined as a 'Primary Village' based on the number of available facilities and services, its distant relationship from other main settlements on which it relies for higher order shopping, employment and secondary schooling opportunities, and limited public transport provision. It was agreed that no material change had occurred in relation to local services or public transport availability since the earlier appeal hearing.
11. At the hearing, it was agreed between the parties that the 'most important' policies for determination of the appeal were Policies SC1, SV1 and TR2 of the WSLP. In summary, Policy SV1 requires that new developments form an integral, harmonious addition to the settlement's existing character, help to maintain or enhance the existing level of service provision and help to create balanced communities at a level appropriate to their role and function. Policy TR2 stipulates that development should complement the existing service provision within the settlement and surroundings without generating new unsustainable transport patterns (as a consequence), and should not result in significant additional traffic over minor roads.
12. Policy SC1 is the key policy seeking to guide the scale of development relative to the hierarchy of settlements in the WSLP area. As Stogursey is a 'primary village', the relevant wording of the Policy is as follows:

⁴ Appeal Ref: APP/W3330/W/19/3243508

“Limited development in the primary villages, including... Stogursey, will be permitted where it can be demonstrated that it will contribute to wider sustainability benefits for the area.”

13. The parties agree that there is no contention with any of the criteria a) to e) listed in Policy SC1 4). However, as the Policy wording refers to the term ‘limited development’, the relevant definition from the preamble is as follows:

“... ‘Limited development’ means individual schemes of up to ten dwellings providing about a 10% increase in a settlement’s total dwelling number during the Local Plan period, limited to about 30% of this increase in any five year period.”
14. Clearly the proposal would not be an individual scheme of ‘*up to 10 dwellings*’ in line with that particular, unambiguous part of the Policy. The increase of ‘about’ 10% of the total dwelling number of Stogursey for the Plan period was agreed as around 39 dwellings (10% of 388). Due to other permissions either granted or very likely to be granted imminently, the remainder of the dwellings that could be permitted in line with the Policy would be around 25, taking into account deductions for the Paddons Farm scheme⁵ and Castle Street scheme⁶.
15. In reference to the ‘*limit [of] about 30% of this increase [i.e. 39 dwellings] in any five year period*’, the first nine years of the Plan period have elapsed, nearly five since its adoption in 2015 and approximately 30% of that increase (around 12 dwellings) have been, or are imminently due to be permitted with incremental deliveries expected to follow therefrom. There are eleven years of the Plan’s life yet to run.
16. The scheme would comprise broadly 70% of the total allowable 39 dwelling/ 10% increase in Stogursey’s total size. It would monopolise the remaining growth quota for the Plan period by placing it all on a single site at broadly the halfway point in the Plan’s life. As this would largely preclude policy support being offered to future infill, redevelopment, intensification or other more organic, ‘limited development’ schemes, it would be counter to the aims of Policy SC1.
17. However, the overall quantum would not be disproportionate to the scale of growth envisaged for Stogursey within the Plan. In this context, the dwellings would maintain or enhance the existing level of service provision and help to maintain a balanced community at a level appropriate to its role and function. It would do so without an unacceptable impact on transport patterns or significant additional traffic on minor roads.
18. Taking account of the above, in my view, the proposal would conflict with WSLP Policy SC1 by reason of its scale and its monopolisation of the remaining permissible growth for Stogursey. However, insofar as the scale of growth is envisaged for the settlement over the plan period in any event, the proposal would not directly conflict with Policies SV1 or TV2.

Other Considerations

19. The appellant asserts that the Council cannot demonstrate a five year supply of housing land (5YHLS). On the basis of the evidence before him in the previous appeal hearing, my colleague found that the Council was incapable of demonstrating a

⁵ Paddons Farm

⁶ Castle Street scheme

5YHLS and that it was more likely that the Council could demonstrate a supply of around 3.93 years. Whilst I am not duty bound to accept my colleague's findings in relation to the 3.93 year supply, it was confirmed by the parties that the appeal decision is a relevant and recent material consideration and the Statement of Common Ground (SoCG) defines its materiality as significant.

20. It was also clarified during the hearing that the appellant's newly revised housing supply figure of 3.74 years (scenario 2) differs from that previously accepted by my colleague of 3.93 years, due to the Council's recent inclusion of a shortfall of 174 dwellings from previous years within the supply calculation. As this explanation was accepted by the Council, I find no reason to disagree with this general approach.
21. Since the earlier appeal was determined, the Council has published its 2021 Strategic Housing Land Availability Assessment (SHLAA) 2021 which suggests a 5YHLS of 5.21 years can be demonstrated. It was confirmed at the hearing that this is the same figure before my colleague in January 2021, within the Council's 2021 SHLAA and within the Council's Statement for this appeal.
22. Clearly, events can have occurred between the date of the previous appeal decision that alter the 5YHLS situation. The discussion during the hearing included reference to the contested sites⁷ to which my colleague referred in his decision.
23. From the evidence put to me, the actual notable changes that have occurred since 29 March 2021 include the granting of the following permissions:
 - Outline permission, ref 3/37/17/019 granted on 15 June 2021, subject to a Section 106 at Liddymore Estate, Watchet for 139 dwellings.
 - Full permission, ref 3/21/21/015 granted on 14 July 2021 for 54 dwellings on Land at Seaward Way, Minehead.
24. Only the 54 dwelling scheme at Seaward Way, Minehead is a new addition to the supply and does not form one of the previously contested sites. Its contribution of 54 dwellings can be included as an entirely new contribution of dwellings to the 5YHLS calculation as it appears that there is certainty over delivery with the Council being both the landowner and developer.
25. A yield from the other two schemes at Liddymore Estate and Liddymore Farm had already been factored into the 5YHLS scenarios before my colleague, i.e. for the Liddymore Estate scheme, 105 dwellings had been factored into the calculation and in the case of Liddymore Farm, 172 dwellings had been included, even though the permission for the reserved matters consent is still not issued following the Planning Committee's resolution to grant on the 10 June 2021 (ref 3/37/20/006). So whilst a permission has been issued and some progress made with another, to add them in would amount to double counting.
26. The Council discussed the other contested sites and progress that had been made on those. It became apparent that there would be likely changes on some of those either in the near future or within a reasonable timeframe up to around the end of 2021 / early 2022, with a number of other large schemes planned to go before the Council's Planning Committee and the finalisation of S106 or conditions matters on others for which there is already a longstanding positive committee resolution. However, despite

⁷ Hopcott Road, Minehead, ref 3/21/13/120; South of Hopcott Rd, Minehead, ref 3/21/19/092; Wansborough Paper Mill, Watchet, ref 3/37/19/021; West of and North of A39, Williton, ref 3/39/20/003; South of B3192 Cleeve Hill, Watchet, ref 3/37/18/015; Liddymore Estate, Watchet, ref 3/37/17/109 and Liddymore Farm, Watchet, ref 3/37/17/020

the clear intent to progress these matters, the status of those has not yet changed to a degree that would enable me to reach an alternative view to my colleague and consider those sites deliverable, using the unchanged definition in the Framework. Nor do I have the level of evidence before me in relation to the commitment to early delivery of these contested sites as claimed exists by the Council that would enable me to reach an alternative conclusion.

27. Consequently, based on the evidence before me and the discussion which took place as part of the hearing, I reach the view that the Council is still incapable of demonstrating a 5YHLS at the present time and that the appellant's figure of 3.74 years is to be preferred. Whilst I accept that this position is dynamic and can be overtaken by changes in circumstances, I do not agree that sufficient actual changes have occurred since the previous appeal decision that enable me to reach the same view as the Council. However, without fettering any future decision on the future supply position, it is unlikely that the 5YHLS deficit will persist for long, with the five year anniversary of the WSLP scheduled in November 2021. At this juncture, the Council will be capable of using the Government's standard methodology for calculating housing supply and a materially different outcome could be reached.
28. Nevertheless, the pertinent conclusion is that the Council is presently incapable of demonstrating a 5YHLS and thus, the Policy which is agreed as being most important to the determination of the appeal, Policy SC1, is considered out-of-date in the context of paragraph 11 d) of the Framework. The 'tilted balance' outlined in the same requires that where policies that are most important for determining an application are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The tilted balance is engaged in this case.
29. The harm would result from the large scale of the scheme in contrast with the desired organic growth envisaged by the Plan, essentially monopolising the increase in housing in the village for the remainder of the plan. The Council also raise concerns with the previous slow rate of delivery of large housing schemes in Stogursey, which further explains the desire to enable smaller schemes to come forward over the Plan period.
30. In terms of the benefits of the scheme, it is clear that the provision of housing would be beneficial both socially and economically. It would create construction phase job opportunities in the short to medium term and help to sustain local services and facilities in the longer term. It would also deliver 35% affordable housing, which inadvertently, Policy SC1 has the effect of constraining delivery of due to its upper threshold of 10 dwellings under the definition of 'limited development'. The parties agreed that there was a high level of affordable housing need and that the provision of affordable housing would be considered beneficial in this context. Overall, I attribute the benefits of the scheme considerable weight.

Other Matters

Exmoor and Quantocks Oak Woodlands Special Area of Conservation (SAC)

31. The appeal site is within around 4 km of the above SAC and could have effects on its integrity through harm, directly or indirectly, to its qualifying features and the habitats on which they rely, including Oak tree species, Barbastelle bats and Bechstein bats and otters. The harm could arise from the development considered either alone or in combination with other plans or projects from increased recreational activity from visitors to the woodlands; air quality degradation from increased car journeys around

the SAC; damage to flyways and foraging habitat for the bats; increased lighting on foraging routes, and unintentional increased disturbance to either bats, otters and their respective roosts or areas functionally linked to the SAC.

32. As such effects cannot be ruled out, I have undertaken an Appropriate Assessment using comprehensive information submitted by the parties in order to assess the likelihood and significance of effects. Though my conclusions are that such potential effects on integrity could be slight rather than significant, there are obvious opportunities to design any scheme and apply conditions that would mitigate them. These mitigation and enhancement measures would include robust landscaping and habitat features on site, conditions seeking details of external lighting schemes and adherence to a Landscape and Ecology Management Plan that would preserve the value of such features throughout the lifetime of the development. Having regard to these conclusions and the view of Natural England as the Statutory Nature Conservation Body (SNCB) which corroborate the same, as competent authority, I consider that the scheme would avoid significant effects on the integrity of the SAC. The proposal therefore complies with the requirements of the Conservation of Habitats and Species Regulations 2017, and Policy NH6 of the WSLP.

General Matters

33. I have noted the comments in objection to the scheme from the Parish Council and a number of other individuals. In respect of the subdivision of the larger field and the part which would remain undeveloped, I do not share the view that this would necessarily lead to another similar development in the future for reasons outlined above. The Council's housing position is likely to change in due course and the attribution of weight to policies of the existing WSLP would also change as a consequence.
34. Despite the claims that the highways are unsuited to additional traffic for reasons of narrowness, insufficient capacity and use by farm machinery, the absence of any objection from the Highway Authority on safety grounds suggests that they are capable of accommodating such. There is no accident data to suggest that the scheme would be so problematic in this regard or at one particular junction that it would fail to comply with the relevant local and national planning policies.
35. I note the generally limited services in the village and the suggestions that they, and other village infrastructure, would not cope with an increase in population. However, the Council indicated at the hearing that the future occupants would likely increase the patronage and consequently, the viability and vitality of these services. As such, I do not have cogent evidence on which to base an appeal on the limited nature of services or oversubscription thereof.
36. Whilst I accept that the indicative details suggest two storey houses would back onto existing bungalows, these details would be reserved for future consideration. The boundary treatment that would be maintained and improved as part of any future scheme between the existing and proposed housing would also help to protect the living conditions of neighbouring occupiers.
37. In terms of the nature and location of the indicative scheme, I do not consider that it would be unsympathetic to the area when considered alongside the existing housing. The comments from the Council's Landscape Officer also appears to corroborate this view, subject to conditions to secure a strong structural landscape treatment on the northern boundary. In this sense, the scheme would comply with Policy SV1 which

requires development to be designed to form an integral, harmonious addition to a settlement.

38. I accept that mitigation and enhancement measures are required to protect the area's biodiversity interests, and these aspects would be necessary to secure by way of planning conditions and within future reserved matters scheme/s.
39. In terms of flooding, there would be requirements for both surface water and foul water drainage schemes to be detailed by way of planning conditions to avoid any increased risks or harm in this regard. Furthermore, as the site is greenfield and has no real existing drainage infrastructure, there is an ability to seek to improve on any unmanaged flood issues that may periodically arise.

Conditions and S106 Planning Obligation

40. I have considered the suggested conditions in light of the Framework and the Planning Practice Guidance (PPG). Where necessary, with agreement, I have undertaken minor alterations in the interests of precision.
41. As the scheme is in outline form, a number of standard conditions are necessary seeking the submission of reserved matters applications and standard time limits for implementation. In the interests of certainty, a condition is also required specifying the approved plans, which are limited to the site location plan, existing site plan and site access plan.
42. In the interests of highway safety, it is necessary to ensure by way of conditions that details of estate roads, car parking layouts, the access works and footpath connection to the village are all submitted to and approved in writing, provided at the appropriate juncture and provided at suitable specifications, i.e. gradients. For similar reasons, it is also necessary to ensure that the visibility at the access junction is continually maintained as such. Additionally, in order to maintain the correct and safe number of car parking spaces, a condition is required precluding the conversion of garages to additional living accommodation under permitted development rights.
43. In order to minimise disruption to adjoining occupiers, to maintain biodiversity and in the interests of highway safety, it is necessary to seek the submission of a Construction Environmental Management Plan.
44. Given the site's proximity and the potential effects of the scheme on the SAC, relevant bat mitigation and enhancement measures must be secured by condition and subsequently delivered within any future reserved matters scheme approved. For similar reasons, but also in view of the more general site and area-specific biodiversity value, landscape quality and visual amenities, a condition is necessary to secure a Landscape and Ecological Management Plan.
45. Specifically in relation to the potential effects on bats, it is necessary to secure details of any external lighting by way of condition before installation within the scheme. For the protection of reptiles that may be present on site, a condition is necessary to ensure that preparatory works are undertaken prior to construction to encourage them to disperse to neighbouring agricultural land.
46. In the interests of flood prevention and to protect human health, it is necessary to ensure a surface water drainage scheme is agreed by way of condition and subsequently implemented prior to occupation of any dwellings hereby approved. For similar reasons, it is also necessary to secure a scheme in relation to foul water drainage.

47. Lastly, in order to protect any potential archaeological remains, it is necessary to secure approval and adherence to a Written Scheme of Investigation.
48. I have considered the suggestion about the use of a phasing condition to stagger the development in line with other housing deliveries in Stogursey over the Plan period. Due to the absence of a 5YHLS, the imposition of a condition that would in some way preclude, or delay the delivery of housing, would undermine the intent of the Framework to significantly boost the supply of housing. Additionally, I also foresee practical complications with requiring adherence to a phasing plan on a scheme which would not easily lend itself to a phased delivery, which could run into years beyond the grant of outline permission and which would require some interaction with the rate of progress of delivery of other schemes in the village. As such, I do not consider this condition necessary, reasonable or enforceable.
49. In terms of the executed UU, I have considered the obligations included therein in the context of the PPG, the Framework and the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs).
50. In respect of the affordable housing provision, I am content that the UU provides for the requisite amount, tenure and affordability of affordable housing and contains the correct local connection clauses to meet the locally identified housing need in order to meet the requirements of WSLP Policy SC4.
51. In terms of the provision of public open spaces on site, their management, and the contribution towards the upgrade of the existing adjacent play space, I am satisfied that the obligations secure the necessary provisions, actions and timely contributions in order to comply with Policies CF1 and ID1 of the WSLP.
52. In terms of the travel plan obligations, I am satisfied that the obligation to submit a travel plan, inclusive of a schedule of payments of contributions, would fulfil the requirements of Policies TR1 and ID1 of the WSLP.
53. Considered as a whole, the UU is a deed containing obligations that are all necessary, relevant and appropriate in scale and kind to the development, thus compliant with the Framework, PPG and CIL Regs.

Overall Conclusion

54. Taking all of the above into account, the scheme is in conflict with the Development Plan when considered as a whole.
55. At the present time, I consider that the tilted balance is engaged owing to the absence of a 5YHLS. Though I accept that this is likely to be short-lived and that the Council is making progress towards achieving a more robust 5YHLS position, this in itself is not a reason to disapply the tilted balance. Similarly, there are no reasons in relation to particular sites or assets afforded greater protection by the Framework for it to be disengaged.
56. The harm arising from the conflict with the development plan which seeks a more organic and staggered delivery of housing over the plan period would not significantly and demonstrably outweigh the numerous sustainability benefits of the scheme, which includes the delivery of housing of around the overall quantum envisaged for the village during the plan period, and particularly, the provision of affordable housing.

57. Consequently, the tilted balance forms a consideration of such materiality in this case that it dictates that a decision should be taken other than in strict accordance with the development plan.

58. For the reasons set out above, the appeal is allowed.

Hollie Nicholls
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joe O'Sullivan
(Hons) PGDIP URP MRTPI

Head of Planning at AAH Planning Consultants BSc

FOR THE LOCAL PLANNING AUTHORITY:

Jeremy Guise
BSc (Hons) Dip TP MRTPI

Planning Specialist with the Council

Ann Rhodes
BA (Hons) PG DIP

Strategy Specialist (Planning Policy) with the
Council

Paul Browning
BSc (Hons) Dip TP MRTPI

Strategy Specialist with the Council

SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development commences and the development shall be carried out as approved.
2. Application for the approval of Reserved Matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission. The development hereby permitted shall be begun not later than 2 years from the date of approval of the last reserved matters to be approved.
3. The development shall conform in all aspects with the plans and details shown in the application as listed below:
 - Site Location Plan Ref CAL061119 01
 - Existing Site Plan Ref CAL061119 02
 - Site Access Plan Appendix B to Transport Statement dated 18th November 2019
4. No part of the development hereby permitted shall be first occupied until the access works have been carried out.
5. There shall be no obstruction to visibility greater than 300 millimetres above adjoining road level in advance of lines drawn 2.4 metres back from the carriageway edge on the centre line of the access and extending to points on the nearside carriageway edge 43 metres either side of the access. Such visibility shall be fully provided before the development hereby permitted is brought into use and shall thereafter be maintained at all times.
6. No dwelling hereby permitted shall be occupied until details of the total number of car parking spaces, the number/type/location/means of operation and a programme for the installation and maintenance of Electric Vehicle Charging Points and points of passive provision for the integration of future charging points has been submitted to and approved in writing by the Local Planning Authority prior to construction of the above groundworks. The parking spaces and Electric Vehicle Charging Points as approved shall be installed prior to occupation and retained in that form thereafter for the lifetime of the development.
7. The proposed estate roads, footways, footpaths, tactile paving, 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. The development shall be completed in accordance with the approved details.
8. 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.

9. The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10 and shall be permanently retained at that gradient thereafter at all times.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order), the use of any garage hereby permitted, as part of this development shall not be used other than for the parking of domestic vehicles and shall not be used for additional ancillary residential accommodation or business use.
11. No development shall commence unless a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The works shall be carried out strictly in accordance with the approved plan. The plan shall include:
 - Construction vehicle movements;
 - Construction operation hours;
 - Construction vehicular routes to and from site;
 - Construction delivery hours;
 - Expected number of construction vehicles per day;
 - car parking for contractors;
 - Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;
 - A scheme to encourage the use of Public Transport or car sharing amongst contractors;
 - Measures to avoid traffic congestion impacting upon the Strategic Road Network, if required.
12. A minimum accessible habitat enhancement area for Barbastelle bats of 0.34ha shall be provided, to include a bat corridor with a minimum width of 15 metres around the north western and southern boundaries of the site. The replacement habitat shall be a long sward meadow, scrub, and shall include hedgerow enhancement along the edge of the north-western and southern boundaries of the site. The layout and a planting schedule for the habitat creation and hedgerow enhancement shall be submitted to and approved in writing by the Local Planning Authority as part of the Reserved Matters layout/s or at least prior to any development commencing on site. These features shall be planted/provided as part of the development prior to occupation of any dwelling hereby approved.
13. A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority prior to the occupation of any dwellings hereby approved. The content of the LEMP shall include the following.
 - a) Description and evaluation of features to be managed.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).

g) Details of the body or organization responsible for implementation of the plan.

h) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully-functioning biodiversity objectives of the originally approved scheme.

The approved LEMP will be implemented in accordance with the approved details.

14. Prior to the occupation of the first dwelling, a "lighting design for bats" shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall:

a) identify those areas/features on-site that are particularly sensitive for bats and that are likely to cause a disturbance in or around their resting places or along important routes used to access key areas of their territory, for example, for foraging; and

b) show how and where external lighting will be installed (through the provision of lighting contour plans and technical specifications) for all access routes and paths so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species 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.

15. Any vegetation in the construction area should initially be reduced to a height of 10 centimetres above ground level by hand, brushings and cuttings removed and the remainder left for a minimum period of 48 hours of fine warm weather (limited rain and wind, with overnight temperatures of 10°C or above) before clearing to minimise the risk of harming/killing any reptiles that may be present and to encourage their movement onto adjoining land. Once cut or if as managed, vegetation should be maintained at a height of less than 10cm for the duration of the construction period. Written confirmation of these operations will be submitted to the Local Planning Authority.

16. No development shall be commenced until details of the surface water drainage scheme based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The drainage strategy shall ensure that surface water runoff post-development is attenuated on-site and discharged at a rate and volume no greater than greenfield runoff rates and volumes. Such works shall be carried out in accordance with the approved details. These details shall include: -

- Details of phasing (where appropriate) and information of maintenance of drainage systems during construction of this and any other subsequent phases.
- Information about the design storm period and intensity, discharge rates and volumes (both pre and post-development), temporary storage facilities, means of access for maintenance (6 metres minimum), the methods employed to delay and

control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters.

- Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant).
- Flood water exceedance routes both on and off-site, note, no part of the site must be allowed to flood during any storm up to and including the 1 in 30 event, flooding during storm events in excess of this including the 1 in 100yr (plus 40% allowance for climate change) must be controlled within the designed exceedance routes demonstrated to prevent flooding or damage to properties.
- A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management company or maintenance by a Residents' Management Company and / or any other arrangements to secure the operation and maintenance to an approved standard and working condition throughout the lifetime of the development.
- Infiltration testing undertaken in accordance with Building Research Digest 365 and a viable surface water drainage strategy based on these results. If infiltration is found to be unviable a surface water drainage strategy based on using SuDS features and attenuation should be progressed further.
- Further site investigation carried out to explore the site constraints, such as groundwater levels, and the drainage design based upon these results to ensure a viable drainage strategy.

17.No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved foul water strategy relevant to that dwelling.

18.No development shall commence until the applicant, or their agents or successor in title shall have secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The WSI shall include details of the archaeological investigation, the recording of the heritage assets, analysis of evidence recovered from the site and publication. The development shall be carried out in accordance with the approved WSI.



Costs Decision

Hearing Held on 3 August 2021

Site visit made on 5 August 2021 **by**

Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 17 September 2021

Costs application in relation to Appeal Ref: APP/W3330/W/21/3272670 Land off Shurton Lane, Stogursey, TA5 1RW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Land Allocation Ltd for a full award of costs against West Somerset and Taunton Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline application with all matters reserved except for access for a residential development of up to 27 No. dwellings (resubmission of 3/32/19/011).
-

Decision

1. The application for costs is allowed in the terms set out.

The submissions for Land Allocation Ltd

2. The appeal was originally to be determined under the written representations procedure. Following receipt of the Council's Statement, it became apparent that the Council was seeking to claim that a five year housing land supply existed (5YHLS), despite the earlier appeal decision of 29 March 2021¹ indicating that the Council was incapable of demonstrating a five year supply of housing land.
3. At the time a change in procedure became necessary, the applicant indicated that this would likely lead to a submission of a claim for costs from the Council, owing to the lack of account on the part of the Council of the earlier appeal decision and lack of justification in support of its case on the matter of the 5YHLS.
4. The applicant highlights the Council's failure to provide the documents requested, i.e. planning permission decisions (refs 3/37/20/006 and 3/21/21/015) and the Strategic Housing Land Availability Assessment (SHLAA), which were not forthcoming within the requested deadlines. In fact, at the time of the submission of the Council's Statement, neither permissions had actually been granted even though positive Committee recommendations may have been reached.
5. The summary of the applicant's position is that the Council have acted unreasonably and incurred unnecessary and wasted expense through the escalation of the case to an informal hearing through a failure to provide information, vague references which led to a change in the appeal procedure, relying on information which was inaccurate and persisting in concluding a

5YHLS could be demonstrated when an Inspector had reached pertinent conclusions in a materially relevant decision only a matter of months prior to the hearing.

The response by Somerset West and Taunton Council

6. The response by the Council was made in writing on the day of the closure of the hearing. The applicant was provided with an opportunity to comment on the Council's rebuttal.
7. Essentially, the Council's response highlights the importance of the development plan as the starting point for consideration of the appeal proposal and the non-compliance of the proposal therewith. The response also highlights the relevant extracts of the earlier appeal decision which indicates that the 5YHLS position was based on the evidence before my colleague at that time in relation to that particular appeal, some four months prior to the date of the hearing.
8. The summary position of the Council is that it considered that circumstances had materially changed between the time of the earlier decision and the consideration of the appeal proposal which led to its defence of the case prior to and during the hearing.

Reasons

9. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal.
11. In terms of the procedural aspects, the Council did not provide some requested documentation on request within a specified deadline, even when that deadline was subsequently extended. This led to a degree of uncertainty about the appropriate method of determining the appeal and inability to prepare fully for the hearing when the case had been escalated to be determined as such. Further, despite the ability to be sufficiently clear about reliance on a 'permission' to advance an argument on a 5YHLS, the Council presented inaccurate information alleging that such permissions had been granted when in fact, at that time, those permissions had not been granted. The Council's case provided scant detail about the evidence on which it relied to substantiate a change in circumstances between the earlier appeal decision and the hearing, which through its vague submissions, became necessary.
12. In terms of the substantive matters, the Council defended the 5YHLS position when it was found incapable of doing so by an Inspector only four months prior to the hearing. The appeal decision was agreed as being a significant relevant material consideration by both parties in the Statement of Common Ground and includes reference to the 'absence of extant planning permissions' and the definition of deliverable in the National Planning Policy Framework, which prevent the inclusion of a substantial number of homes in the housing supply calculation. As the Council again sought to promote the inclusion of a number of sites which do not yet have extant permissions, the substantive merits of the case were partially flawed and resulted in wasted time and expense.

Conclusion

13. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Somerset West and Taunton Council shall pay to Land Allocations Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred from the date of 17 June 2021 in respect of determination of the appeal by way of informal hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. Land Allocations Ltd is now invited to submit to Somerset West and Taunton Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Hollie Nicholls

Site: LAND TO THE REAR OF YONDERDOWN AND 3 CURDLEIGH LANE,
BLAGDON HILL, TAUNTON, TA3 7SH

Proposal: Redetermination of Appeal

(Erection of 2 No. single storey dwellings in the gardens to the rear of Yonderdown and 3 Curdleigh Lane, Blagdon Hill (amended scheme to 30/16/0047))

Application number: 30/18/0035

Reason for refusal: Appeal – Dismissed
Costs - Allowed

Original Decision:



The Planning Inspectorate

Appeal Decision

Site visit made on 31 August 2021 by **Colin Cresswell BSc**

(Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State ~~for Communities and Local Government~~

Decision date: 24 September 2021

Appeal Ref: APP/W3330/W/19/3229997RD Land to the rear of Yonderdown and 3 Curdleigh Lane, Blagdon Hill, Taunton TA3 7SH

- 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 & Mrs Hoskins & Mr Cosens against the decision of Somerset West and Taunton Council.
 - The application Ref 30/18/0035, dated 22 October 2018, was refused by notice dated 14 March 2019.
 - The development proposed is erection of 2 single storey dwellings with associated works and landscaping.
 - This decision supersedes that issued on 31 January 2020. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs Hoskins and Mr Cosens against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Background and Main Issues

3. The proposal was the subject of an appeal decision¹ dated 31 January 2020 which was subsequently quashed by the High Court. The main issue identified by the Inspector in that decision was the effect of the proposed dwellings on the character and appearance of the area. This reflects the single reason for refusal listed in the Council's Decision Notice.
4. However, attention has since been drawn to the high levels of phosphates within the Somerset Levels and Moors Ramsar Site. Natural England wrote to the Council on 17 April 2020 to advise that further residential units within the catchment may be harmful to the conservation objectives of the site by adding to waste water effluent. This is of direct relevance to the appeal as the proposed dwellings would be situated within the surface water catchment area of the Ramsar Site. That being the case, I have a statutory duty to address the matter and have therefore made the effect on the Ramsar Site a main issue in the appeal even though it is not listed as a reason for refusal. Both parties have been given an opportunity to comment.

¹ Appeal Decision: APP/W330/W/19/3229997 (quashed by order of the High Court).

5. The main issues in this case are therefore:

- the effect of the proposal on the Somerset Levels and Moors Ramsar Site having particular regard to phosphate levels.
- the effect of the proposal on the character and appearance of the area.

Reasons

Effect on Ramsar Site

6. The Ramsar Site is designated for its internationally important wetland features, including the diversity of its flora and fauna. In its letter to the Council, Natural England says that the interest features of the Ramsar Site are unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates. It is stated that additional residential units within the catchment are likely to add phosphate to the designated site via waste water treatment effluent, thus contributing to the existing unfavourable condition and further preventing the site from achieving its conservation objectives.
7. I have little reason to doubt the accuracy of the advice from Natural England and, consequently, it seems to me that that the proposed development would be likely to have a significant effect on the interest features of the Ramsar Site. In these circumstances, the Habitat Regulations⁸ require me to carry out an Appropriate Assessment. This is to determine whether or not the proposal would affect the integrity of the site.

⁸ Conservation of Habitats and Species Regulations 2017 as amended. ³
People over Wind and Sweetman v Collite Teoranta ECLI:EU:C:2018:244 ⁴

8. Recent caselaw³ requires the decision maker, when considering the effect that a proposal would have on European Sites, to consider mitigation within an Appropriate Assessment. In this particular case, the appellants indicate that they did not wish to incur further costs in seeking to establish a scheme of mitigation. Brief reference is made to potentially installing an on-site mitigation scheme, or alternatively, pursuing a strategic mitigation option. However, no specific details are provided and little more is said. Indeed, the appellants instead suggest that these matters could be addressed as part of a fresh planning application. Therefore, based on the evidence provided in this appeal and, adopting a precautionary approach, in the absence of mitigation, it is reasonable to suppose that the proposal both individually and in combination with other projects would have the potential to increase phosphate levels in the designated wetlands.
9. This leads me to conclude that there is an unacceptable risk that the proposed development would have a significantly adverse effect on the internationally important features and integrity of the Ramsar Site. It would be in conflict with the aim of Policy DM1 of the Core Strategy⁴ to protect wildlife habitats. There would also be conflict with provisions of the Framework⁵ in this regard.

Character and appearance

10. Blagdon Hill is a small village surrounded by open countryside. Most housing is situated along the frontage of the main road which runs in a north to south direction through the village. As such, much of Blagdon Hill is based around a generally linear pattern of development. However, not all development in the village is evenly distributed on either side of the main north to south route. There are also a number of adjoining roads which contain housing and, in places where these roads merge, the prevailing pattern of development becomes somewhat less linear in nature.
11. One of these adjoining roads is Curdleigh Lane, which runs in a west to east direction towards the open countryside. The lane is characterised by large detached dwellings which are well set back from the street frontage behind hedges and mature vegetation. Alongside the nearby agricultural fields, these features give Curdleigh Lane a distinctly spacious, leafy and rural appearance consistent with its location on the edge of the village.
12. The proposed dwellings would be situated in the rear gardens of Yonderdown and No 3 Curdleigh Lane. As the dwellings would be positioned behind existing properties and would be well set back from the road frontage, they would not be very conspicuous from within the lane. Although a new access drive would be constructed next to Yonderdown, this would be in keeping with the existing driveways which access Curdleigh Lane at this point. The visual impact on the lane would therefore be minimal and its open, leafy and spacious characteristics would be maintained.
13. The rear gardens of Yonderdown and No 3 adjoin open paddocks which, in turn, adjoin a wider expanse of agricultural fields. From some vantage points within these gardens, it is possible to look across these open areas towards dwellings in more distant parts of Blagdon Hill. However, due to the topography of the area and the prevalence of trees and hedgerows in the landscape, the visual exposure of the site within the wider surroundings is limited. The proposed dwellings would be very low in height and, together with the additional planting being proposed along the northern

boundary, they would not be easily discernible from public vantage points within the village or surrounding countryside, including from the public footpath network.

14. While the dwellings would be visible from the rear of some nearby properties in Curdleigh Lane (particularly Yonderdown and No 3) they would remain well enough separated from existing development to maintain the sense of spaciousness which characterises these rear gardens. The presence of hedges and mature vegetation within the local setting would further reduce the visual prominence of the dwellings from adjoining properties.
15. Although my attention has been drawn to another example⁹ of housing being permitted to the rear of an existing property, I nonetheless recognise that such developments are not commonplace within Blagdon Hill. However, in this particular case, I have found that the proposed dwellings would not be very noticeable features and so would not undermine the distinctive characteristics of the village, including its pattern of development.
16. I have considered the Council's argument that allowing this appeal would set a precedent for other similar developments. However, each proposal must be determined on its own merits and a generalised concern of this nature does not convince me that the development would be harmful in this case. Differing circumstances and the potential for cumulative harm would represent matters to be considered were other similar proposals to be advanced.
17. I therefore conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area. There would be no conflict with the design objectives of Policies CP1, CP8 or DM1 of the Core Strategy. Nor would the proposal conflict with Policy D7 of the Site Allocations Development Management Plan¹⁰ or the Draft Design Guide⁸, which seek appropriate standards of design.

Conclusion

18. The development would make a positive contribution to local housing supply and, due to the design of the units being proposed, may be particularly well suited to some elderly residents. However, given the small scale of the development, these benefits would be relatively minor and so I do not assign them a great deal of weight in this appeal. For similar reasons, I do not assign the ecological benefits of the proposed planting much weight either.
19. I have found that the development would be acceptable in terms of its effect on the character and appearance of the area. I also note that it would comply with a number of other planning policies, including those which permit new housing within the village. However, the lack of harm with regard to these matters does not outweigh the potential harm to the Ramsar Site that has been identified. Considering the international importance of such habitats, this harm carries substantial weight. Hence, the benefits of the proposal do not outweigh the harm. This is not the sustainable development for which the Framework says that there is a presumption in favour.
20. I therefore conclude that the appeal should be dismissed.

⁹ Council Reference: 30/18/0001 (Nutbeam Farm)

¹⁰ Taunton Deane Adopted Site Allocations and Development Management Plan 2016. ⁸ Somerset West & Taunton Design Guide Draft SPD, 2021.



Costs Decision

Site visit made on 31 August 2021 by **C Cresswell BSc**

(Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Costs application in relation to Appeal Ref: APP/W3330/D/21/3229997RD Land to the rear of Yonderdown and 3 Curdleigh Lane, Blagdon Hill, Taunton TA3 7SH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Hoskins & Mr Cosens for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal of planning permission for erection of 2 single storey dwellings with associated works and landscaping.

Decision

1. The application for an award of costs is allowed in part in the terms set out below.

Reasons

2. The Council acknowledge that the appeal needed to be redetermined because it made a procedural error during the notification process. It seems to me that this procedural error has the potential to fall as an example of unreasonable behaviour consistent with the those set out in paragraph 047 of the Planning Practice Guidance.
3. However, in this particular case, the main issue in dispute is not whether the Council made a procedural error, but whether this has led to the appellants incurring unnecessary or wasted expenses during the appeal process. Within their costs application, the appellants list the unnecessary and wasted expenses which they say were incurred as a result of the Council's procedural error. I have dealt with each of these in turn.
4. Firstly, it is argued that additional costs were incurred as a result of responding to the comments of interested parties. However, as the Council points out, the same

interested parties would have likely made representations anyway had they been properly notified of the appeal. I would agree that responding to representations received as part of the appeal is a normal part of the appeal process and am therefore not convinced that wasted expense was incurred in responding to these comments.

5. On the other hand, the appellants would not have needed to produce a response to the Council's comments on the redetermined appeal had procedures been properly followed. A good deal of time passed between the Council originally determining the planning application and the appeal reaching the redetermination stage. During this time, there was a significant change in circumstances and the Council produced a further statement to draw attention to the effect of phosphates on the Ramsar Site as well as new design guidance. The appellants had an opportunity to respond and did so by submitting further comments in a statement dated 28 June 2021. This would have been unnecessary if the appeal had not needed to be redetermined. Costs were therefore incurred as a result of the unreasonable behaviour.
6. The original ecology appraisal was dated August 2018 but, due to the delay caused by the procedural error, it was necessary for this to be updated and a new report was produced dated April 2021. The procedural error therefore led to wasted expenses being incurred.
7. The appellant's costs application also refers to expenses incurred as a result of "instructing Tetra Tech Planning to advise on the claim generally, the potentially town planning related implications on the allowed appeal and to establish a planning strategy for the redetermined appeal". Reference is also made to "considering the implications of the 1st and 2nd defendants' decisions not to defend Mr Meikle's claim in planning terms".
8. It is not entirely clear what the role of Tetra Tech Planning (formerly WYG) would have been in the legal processes surrounding the High Court action. Nonetheless, outside the legal processes, I accept that there would have been a certain amount of communication with the appellants in order to keep them updated and offer advice, particularly on how to proceed with their development proposals once the case had been concluded. Some costs were therefore incurred as a result of the unreasonable behaviour.
9. However, I am not convinced that it would have been necessary to establish a new planning strategy for the redetermined appeal over and above responding to the comments of the Council and interested parties (matters I have addressed above). To a large extent, the appellants relied on their original appeal evidence to defend the Council's reason for refusal.
10. I understand that the appellants have been able to recover the costs of the High Court case and the cost of instructing solicitors. However, I am informed that costs associated with instructing Counsel to advise on and subsequently defend the High Court action were not recovered. Clearly, there would have been no need to have instructed Counsel if the local planning authority had not made an error in the notification process. Yet while the appellants exercised their rights to challenge the decision, the costs of appointing a barrister related to the judicial process. The costs were not incurred as part of the planning application or appeal process. Therefore, unnecessary or wasted expense in the appeal process has not been demonstrated.

Conclusion

11. I conclude that the Council has demonstrated unreasonable behaviour during the appeal process. This has led to the appellants incurring some unnecessary expenses and a partial award of costs is justified. The actual amount of the unnecessary expense is not a matter for this costs decision.

Costs order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Somerset West and Taunton Council shall pay to Mr & Mrs Hoskins and Mr Cosens, the costs of the appeal proceedings described in the heading of this decision, limited only to those costs incurred in relation to: responding to the Council's comments on the redetermined appeal, receiving consultants' advice on planning matters during the High Court action and, finally preparing updated an ecological report.
13. The applicant is now invited to submit to Somerset West and Taunton Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on an amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Cost Office is enclosed.

C Cresswell

INSPECTOR

Site: THE BARN, LUDWELLS FARM, LANGPORT ROAD, WRANTAGE, TAUNTON, TA3 6DQ

Proposal: The construction of an outbuilding at Ludwells Barn, Langport Road, Wrantage, Taunton, TA3 6DQ

Application number: E/0070/24/21

Reason for refusal: Dismissed

Original Decision:



The Planning Inspectorate

Appeal Decision

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 September 2021

Appeal Ref: APP/W3330/C/21/3272827 Ludwells Barn, Wrantage, Taunton, TA3 6DQ

- 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 Mr Christopher Fisher Dodd against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered E/0201/24/19 - 2, was issued on 1 March 2021.
- The breach of planning control as alleged in the notice is the construction of an outbuilding shown edged blue on the plan attached to the notice.
- The requirements of the notice are to remove from the land the outbuilding and all materials resulting from such removal.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is dismissed

The site and relevant planning history

2. The appeal site is adjacent to Ludwell's Farm through which there is a vehicular access to a building which was the subject to a recent appeal against an enforcement notice and which was determined by myself. That appeal

(APP/W3330/C/21/3272700) related to an alleged breach of planning control for the use of a building on the land (shown edged green on the plan attached to the notice) as permanent residential accommodation in breach of Condition 3 of planning permission reference 24/00/0020. Subject to a substituted condition requiring the building to be occupied for holiday purposes only, the appeal was dismissed and the enforcement notice upheld.

3. The building subject to this appeal is situated close to the holiday building which the appellant refers to as the 'host' building. As I had carried out a site inspection for the first appeal and I was able to view the outbuilding externally at the same time it was not necessary to carry out a further site visit.

The appeal on ground (c)

4. An appeal on this ground is that there has not been a breach of planning control. The appellant considers that a 'holiday use only' restricted dwelling is a dwelling and benefits from Class E permitted development rights that allows a large range of buildings on land surrounding a house. The appellant refers to another appeal decision and case law in support. It is stated that the building is used for vehicle storage, tools and material for maintenance, general household storage, gym equipment and a yoga practice area, home office, display area for vintage tools and machinery and a woodworking area which are incidental to the enjoyment of the holiday dwelling. I note that the Council considers that some of these uses are excessive in the context of the size of appeal site, that the floor area of the outbuilding exceeds that of the holiday let and some of the uses are not reasonably required for a holiday let use and are therefore not incidental.
5. However, none of this is material in this appeal as the host building for which the appellant claims Class E permitted development rights is unlawful due to the breach of a condition on the planning permission, as set out above. Article 3(5) (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, indicates that permission granted by Schedule 2 (relating to permitted development rights) does not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.
6. The appeal on this ground fails.

The appeal on ground (g)

7. The appellant has requested that the compliance period be extended from 9 months to 18 months in view of the appellant having to find a new home, removing the contents of the outbuilding, demolishing it and removing the resultant debris.
8. The appellant points out that the host dwelling has been the appellant's home since 2013 and the outbuilding has been in situ since 2018, but in view of my decision on the appeal on ground (g) in APP/W3330/C/21/3272700, there is little justification for the compliance period to be 18 months. The Council's compliance period of 9 months is adequate and proportionate to carry out the requirements of the notice.
9. The appeal on this ground fails.

Peter Jarratt Inspector

Site: 45 NORTHGATE, WIVELISCOMBE, TAUNTON, TA4 2LF

Proposal: Alleged unauthorised fence along front boundary at 45 Northgate, Wiveliscombe

Application number: E/006/49/20

Reason for refusal: Dismissed

Original Decision:



The Planning Inspectorate

Appeal Decision

Site visit made on 6 September 2021 by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2021

Appeal Ref: APP/W3330/C/21/3274169 45 Northgate, Wiveliscombe, Taunton, TA4 2LF

- 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 Miss Leah Kramer against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice, numbered E/006/49/20, was issued on 29 March 2021.
- The breach of planning control as alleged in the notice is the erection of two outbuildings on the land in the approximate positions outlined in blue on the plan attached to the notice.
- The requirements of the notice are:
 - 1 Remove the outbuildings from the land
 - 2 Remove from the land all materials resulting from the removal of the outbuildings.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice:

- i) be corrected by the deletion of the words 'the erection of two outbuildings on the land in the approximate positions outlined in blue on the plan attached to the notice' and their replacement with the words 'the erection of an outbuilding used as a bike store situated adjacent to the boundary with No 44 Northgate';
- ii) and varied by the deletion of the words 'outbuildings' in steps 1 and 2 of the notice and their replacement with the word 'outbuilding'.

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

2. Although nobody appeared to be at the site at the time of my site visit, I was able to view the two outbuildings the subject of the allegation from the front garden and road.
3. An enforcement notice requiring the reduction in height to 1 metre of an unauthorised timber fence adjacent to the highway which exceeds that height took effect on 28 September 2020. No appeal was made against the notice. At the time of my site visit, the requirements of that notice did not appear to have been complied with.

The appeal site and relevant planning history

4. The outbuildings subject to the notice are situated at the sides of the front garden of the appeal property, which is a semi-detached house in a residential area. The timber bike store is situated to the left of the entrance gate adjacent to No 44 Northgate and projects above the line of the fence. It is decorated with coloured lights. The second outbuilding is a log store situated to the right of the entrance gate and is of similar construction and at a slightly lower height than the bike store, with its roof also visible above the fence line.

The appeal on ground (c)

5. An appeal on this ground is that there has not been a breach of planning control. The appellant states that the log store is no higher than 3ft and the bike store should not be classified as a building as it is a simple roof attached to the side fence.
6. For the purposes of planning control both outbuildings represent development as defined in s55 for which planning permission is required.
7. The Town and Country Planning (General Permitted Development) (England) Order, as amended, sets out what may be constructed within the curtilage of a dwellinghouse without the need for express planning permission. Class E of Schedule 2 Part 1 of the Order does not permit outbuildings situated between the front elevation of the dwelling and the boundary fence adjacent to the public highway.
8. The outbuildings do not benefit from any permission and the appeal on this ground fails.

The appeal on ground (d)

9. An appeal on this ground is that it is too late to take enforcement action. The appellant claims that the log store is over 6 years old, being constructed in July 2015 although no representations are made in respect of the age of the bike store.
10. Frank Blaker Building Services confirm in an email dated 30 April 2021 that he assisted in the construction of the log store in the middle part of July 2015. The occupiers of No 45 Northgate confirmed in May 2021 that the log store has been in place for at least 5 years.
11. The Council acknowledge that there was a structure in situ at the time of an officer site visit on 5 July 2019 (partially visible on the photo at Appendix B). The Council became aware of both outbuildings in February 2021 when compliance with the extant enforcement notice was being checked.
12. The Council has not provided any evidence to contradict the appellant's version of events as supported by the neighbours and Frank Blaker Building

Services. I therefore conclude that the log store was constructed in excess of four years prior to the notice and has consequently achieved immunity from enforcement action through the passage of time. However no such immunity has been achieved by the bike store.

13. I note that compliance with the enforcement notice relating to the fence may make the log store more visible in the street scene but this is not a factor relevant to matters of law.
14. The appeal on this ground succeeds in respect of the log store.

The appeal on ground (f)

15. An appeal on this ground is that the steps are excessive and that lesser steps would overcome the objections.
16. The appellants believe that the lesser steps should only require the removal of the overhanging roof boarding to the bike store and that the bikes could be covered by a tarpaulin or other temporary cover. However, in the light of the success of the appeal in respect of the log store, it seems that other alternatives for the storage of bikes may exist such as by reorganising the log store to accommodate bikes.
17. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
18. The appellant points out that the materials arising from the removal of the bike store have to be removed from the land. That is what step 2 of the notice requires but I note that the Council indicates that the material could be used in the back garden for a structure that complies with permitted development rights and invites the appellant to submit details to the Council beforehand.
19. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

Reasons

20. I conclude on the balance of probabilities that the construction of the log store took place more than 4 years prior to the issue of the enforcement notice and that the time for issue of the enforcement notice set out in section 171B(1) the 1990 Act as amended has therefore expired. Accordingly the appeal succeeds on ground (d) in respect of the log store and I shall correct the notice and vary the requirements to reflect this.
21. The appeal in respect of the bike store is dismissed and the enforcement notice is upheld.

P N Jarratt Inspector

Site: Strawberry Fields, Holford, TA5 1RZ

Proposal: Alleged unauthorised agricultural building not in accordance with prior approval at Strawberry Field, Holford

Application number: ECC/EN/18/00005

Reason for refusal: Dismissed / Enforcement Notice Upheld

Original Decision:



Appeal Decision

Site visit made on 6 September 2021 by **P N Jarratt BA DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 October 2021

Appeal Ref: APP/W3330/C/21/3275167 Land on the south side of Bourne Cottage, Holford, Somerset TA5 1RZ

- 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 Ms Jessica Wyatt against an enforcement notice issued by Somerset West and Taunton Council.
 - The enforcement notice, numbered ECC/EN/18/00005, was issued on 19 April 2021.
 - The breach of planning control as alleged in the notice is the erection of a building in the approximate position shown edged blue on the plan attached to the notice.
 - The requirements of the notice are 1) demolish the building referred to in the breach; and 2) remove from the land all materials resulting from such demolition.
 - The period for compliance with the requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal site and relevant planning history

2. The site is in an isolated area of open countryside within the Quantock Hills AONB and in an SSSI. The holding is about 6.5 hectares and includes 2 hectares of woodland. Access to the site is via a track through a National Trust woodland.

3. Prior notification for the erection of an agricultural building was determined as not being required in January 2014 ((3/16/13/014).
4. The erection of an agricultural building with twin wall flue pipe and associated earthworks (retention of works already undertaken) has been refused (3/16/18/008).
5. An application for the erection of an agricultural building was submitted in November 2019 and dismissed on appeal in July 2020 (3/16/19/005 and APP/W3330/W/20/3249895).
6. An application for the retention of agricultural building including alterations to existing structure resubmission of 3/16/18/006) was refused in February 2020 (3/16/19/005).

The appeal on ground (e)

7. An appeal on this ground is that the notice was not properly served. The land was purchased jointly by the late John Hughes and Jessica Wyatt (the appellant) in November 2013 but the relationship broke up in 2017. It is the appellant's case that the notice should have been served on John Hughes children and that a Planning Contravention Notice was not served to establish ownership and other matters. Mr Hughes estate is being administered by his daughter, Miss Rosie May Hughes, who lives in New Zealand and has submitted a statutory declaration dated 6 June 2021 and sworn in Hamilton, New Zealand in respect of various photographs of the building the subject of the notice.
8. The Council served the notice on the registered owner shown on the Land Registry records and a further copy of the notice was posted on the site. The appellant's agent advised the Council that Mr Hughes' daughter had 'key responsibility' but not that she had an interest or that she was the registered owner.
9. Although it is good practice for a Council to serve a PCN to establish relevant facts, it is not a requirement prior to serving of an enforcement notice. There are limits to how far a Council needs to go in identifying the owners, occupiers and persons having an interest in the land. It was held in *Newham LBC v Miah* [2016] EWHC 1043 (Admin) that a Land Registry address is proper service if a Council has not been given another.
10. I am satisfied therefore, that on the basis of the Land Registry records, the notice was served correctly. I also note that Miss Hughes, as administrator of her late father's estate, has been fully aware of the notice and in my view, has not been substantially prejudiced by non-service of the notice, even had there been a requirement to do so.
11. The appeal on this ground fails.

The appeal on ground (c)

12. An appeal on this ground is that there has not been a breach of planning control. It is the appellant's case that the building is permitted development.
13. The building as constructed is not in accordance with the size and materials of the building as indicated on the prior approval application form in 2013. As the Council points out this has been effectively acknowledged by the appellant through the submission of retrospective planning applications in 2018 and 2019 for the building as

constructed and the plans submitted with application 3/16/19/00. I note however that the agent is unaware of what pressure/guidance was placed on Mr Hughes resulting in the first application and that he remains of the view that the building is permitted development.

14. Paragraph 6 of the Council's appeal statement compares the prior approval dimensions with those 'as built' and I note that the height has increased from 4m to 4.12m; building length from 10m to 10.4 m and building width from 5m to 5.3m, with the height to eaves remaining at 2.4m. The appellant points out that the discrepancy is due to the method of wall construction and had metal cladding been applied to the steel frame, it would not have exceeded the dimensions. It is further added that the ground area is well below PD limits of 465sqm ground area and 12m in height. The appellant's view is that as the slightly larger isolated structure has no discernible increased impact on the countryside and is not materially different from the brief details in the prior notification application, it should be allowed to remain. Whilst this may be the case, the building was not constructed to the dimensions indicated in the prior approval application.
15. In responding to the prior notification application, the Council confirmed that the development was permitted under the GPDO and that the development did not require prior approval for the siting, design and external appearance, which in view of its location in an AONB is surprising. I note that there was no requirement to submit plans showing the floor plan or elevations of the proposed building in these circumstances and that the application form described the building as a 'modern steel frame box profile clad agricultural barn' and that it was required for 'the secure storage for tractor/machinery/feedstuffs/rainwater collection/hygiene and welfare'.
16. At my site inspection, I observed an incomplete building on a sloping site (contrary to the officer report in the prior approval application referring to the proposed building being on level ground). The lower floor is of blockwork construction having openings for the addition of a window, doors and frames. It contained an old tractor at the time of my visit. Externally the upper/main floor had been felted and battened ready for the installation of an external cladding finish. The main floor appears to have insulated walls with plasterboard in part; plumbing for sanitary facilities; a temporary external access door and glazed domestic windows on three of its four elevations and openings for others. Drawings submitted with applications subsequent to the prior notification application indicate the main floor to have a welfare area as part of an open plan storage and work area, an enclosed shower room (but indicating no toilet) and small store. The roof space appeared to be used as storage space.
17. Development is not permitted by Part 6, Class A of the GDPO if it would involve the provision of a building, structure or works not designed for agricultural purposes. In this case, visually the building appears to have been designed for a dual purpose, with limited storage/agricultural space on the ground floor and for more domestic activities at the upper level, notwithstanding the stated intentions of the appellant that the proposed facilities on this floor would provide a welfare area.
18. The appellant also states that the purpose of the main floor would also be to allow higher quality native timber planks from the woodland to dry/season before being sold for joinery/furniture manufacturing.
19. I struggle to understand how the upper floor of the building with its domestic windows and insulation would provide a suitable environment as indicated by the appellant to

dry/season higher quality native timber planks when the process of timber seasoning is one that can take place either out in the open air or within special wood-drying kilns which provide the timber with optimum levels of heat and air flow required for the drying process. The provision of domestic style windows and limited ventilation would not be conducive to this process in my view.

20. I conclude that the appellant has not demonstrated on the balance of probabilities that the development meets the conditions and limitations in respect of permitted development for agricultural buildings and that no planning permission exists for the development.
21. The fact that applications subsequent to the prior notification were recommended for approval by officers is not relevant to a legal ground of appeal.
22. The appeal on this ground fails.

The appeal on ground (d)

23. An appeal on this ground is that it was too late to take enforcement action. The appellant states that work commenced in 2014 and that by 17 April 2017, the building was shown to be watertight which is when the appellant believes that substantial completion of the new building was achieved, thus achieving immunity from enforcement action under s171B(1).
24. It is clear to me from my own observations and from the photographic evidence of the Council of 9 August 2018 that the building was not substantially complete when claimed as external cladding had not been installed, a number of windows and doors had not been installed at the main and lower levels and that scaffolding was in place. The Council cites Sage v SSETR [2003] UKHL 22 in supporting their conclusion that work was still in progress and could not be regarded as substantially complete.
25. Whilst the appellant may have a different interpretation as to what may constitute 'substantial completion' for an agricultural building and that regard should be had of the developers' original intentions as to the totality of the operations, I attach little weight to the application for prior notification being 'reasonably necessary for the purposes of agriculture'. What has been constructed is different to the prior approval details and, in its present form, raises considerable doubt in my mind whether the facilities provided and the design of the building or the intentions of the appellant were for agricultural purposes alone.
26. The appeal on this ground fails.

The appeal on ground (f)

27. An appeal on this ground is that the steps required are excessive.
28. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. In this case, the purpose is to remedy the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. However it is necessary to consider whether there is any 'obvious alternative' or 'lesser step' which would achieve the purposes of the EN with less cost and disruption. The requirements of the EN should be 'proportionate' in that sense.

29. The appellant anticipates a 'foreseeable reasonable need' for an agricultural building and suggests lesser requirements of either
- i) The building to be completed in accordance with Drawing No 118/2/A (Appendix B of the appellant's statement) which the previous inspector (in appeal APP/W3330/W/20/3249895) concluded caused no visual harm and conditions regarding completion of the works and future use of the building could be imposed; or
 - ii) Drawing No 2113/3 (Appendix F of the appellant's statement) shows the reduction in the size of the building and retention of the steel frame to meet the dimensions given in the prior notification application.
30. It is noted that there is no ground (a) appeal (which I assume is due to the appeal being dismissed in July 2020 (APP/W3330/W/20/3249895)). Although that inspector concluded that the development subject to that appeal would not harm the character or appearance of the area, including the AONB, he nevertheless had doubts over the ability of the building meeting a functional need of the farming business and concluded that the proposal was not acceptable in principle. Furthermore, no convincing justification of a 'foreseeable reasonable need' has been made in this appeal. Accepting the appellant's first option would circumvent a properly made decision on appeal. Where an appeal is not brought on ground (a), it is not appropriate for appellants to introduce arguments on the merits in the context of an appeal on ground (f).
31. In respect of the appellant's second option relating to the reduction in the size of the building, whilst this would permit a building akin to what the prior notification application related to, as there is no ground (a) appeal and the purpose of the notice is to remedy a breach of planning control, any lesser step that would not remedy the breach cannot be accepted through ground (f). The second option would not remedy the breach and is therefore unacceptable.
32. The appellant also requests that to reduce the amount of demolition material to be transported from the site could cause potential damage to the SSSI. It is requested that where the ground has been excavated for the lower ground floor some materials such as concrete blocks could be left on site and the ground remodelled using soil previously excavated and grassed over. The appellant points out that the requirements of the notice do not require the reinstatement of the ground.
33. Without detailed proposals and cross sections of the reinstated ground to provide a full understanding of how this would be implemented in practice, I am not convinced that step 2 of the requirements is unreasonable. It will be a matter for the appellant to pursue such matters with the Council and to decide whether to submit any necessary planning application for any such engineering operations.
34. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
35. The appeal on this ground fails.

The appeal on ground (g)

36. An appeal on this ground is that the compliance period is too short. The appellant considers the compliance period to be generally reasonable but requests that the notice be varied to allow the removal of materials in drier weather and more

favourable ground conditions, and suggests that the compliance period should be up to the end of June.

37. Bearing in mind the date of this decision, the compliance period will extend into early July 2022. Consequently the compliance period meets the appellant's request.

38. The appeal on this ground therefore fails.

Conclusions

39. For the reasons given above I consider that the appeal should not succeed.

P N Jarratt

Inspector

Site: TOP COTTAGE, COOMBE LANE, WEST MONKTON, TAUNTON, TA2 8RB

Proposal: Erection of a two storey extension to the front of Top Cottage, Coombe Lane, West Monkton

Application number: 14/21/0003

Reason for refusal: Dismissed

Original Decision: Chair Decision – Refused



Appeal Decision

Site visit made on 7 September 2021 by Max Webb BA (Hons) **Decision by K Taylor**

BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2021

Appeal Ref: APP/W3330/D/21/3277398 Top Cottage, Coombe Lane, West Monkton, Taunton TA2 8RB

- 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 S Argall against the decision of Somerset West and Taunton Council.
 - The application Ref 14/21/0003, dated 14 February 2021, was refused by notice dated 29 April 2021.
 - The development proposed is an extension to the existing cottage.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matter

3. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). I have had regard to this as a material consideration however, planning decisions must still be made in accordance with the development plan unless material considerations indicate otherwise. The issues most relevant to this appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

Main Issues

4. The main issues in this appeal are the effect of the proposed development on:
- the character and appearance of the host dwelling and surrounding area; and
 - the living conditions of the occupiers of Bottom Cottage, with particular regard to privacy.

Reasons for the Recommendation

5. The appeal property forms part of a semi-detached pair. Both properties have a traditional cottage style, partly displayed by the relatively mismatched fenestration. The appeal dwelling is located on elevated ground above the neighbouring property. The semi-detached pair have a unique amenity space layout, with the neighbouring property, Bottom Cottage, having its garden to the north and the appeal dwelling having its garden to the south, stretching along the south elevation of Bottom Cottage.

Character and Appearance

6. The proposal would add a large extension to the elevation that is seen when approaching the south of the property. This extension would be a substantial addition and, although very slightly set down from the ridgeline and being slightly shorter than the host dwelling, the length and width would add significant bulk to this part of the property. This size would bring the proposal into close proximity with the existing porch area, which would have an awkward juxtaposition and overwhelm this part of the property. The proposal would therefore not appear as a subservient addition.
7. On the most visible south and west elevations of the proposal, the fenestration, whilst not entirely symmetrical, would not have the same mismatched arrangement and size that is seen on the host dwelling. The proposal would thus appear unsympathetic to the character of the host dwelling. The proposal would use materials and built details such as a gable and roof pitch to match the host dwelling. However, this would not reduce the lack of subservience to an acceptable level.
8. Properties in the vicinity of the appeal site have a range of built design, some with alterations, though these are significantly different properties to the appeal proposal. This therefore would not alter the harm that the proposal would cause to the appeal dwelling. The appeal property would not be visible from the nearby listed building, due to the distance and substantial level of greenery. This would also not diminish the harm found to the character and appearance of the host dwelling.
9. Overall, the proposal would cause harm to the character and appearance of the host dwelling. It would therefore not comply with Policies DM1 and CP8 of the Taunton Deane Core Strategy 2011-2028 (adopted 2012), which together aim to ensure proposals do not harm the appearance and character of affected buildings and landscapes, with particular regard to scale. It would also conflict with Policy D5 of the Taunton Deane Adopted Site Allocations and Development Management Plan (adopted 2016), which seeks to protect the form and character of development and ensure extensions remain subservient. It would likewise go against the aims of Policy CSM4 of the Creech St Michael Parish Council Neighbourhood Development Plan 2018-2028 (adopted 2019), which require development to complement and enhance local character.

Living Conditions

10. The proposed extension would have multiple windows and two doors on the elevation facing Bottom Cottage. The proposal would be a reasonable distance from this property, however due to the unique garden layout of the semidetached pair, there

would be a lack of screening between the proposed windows and the south elevation of Bottom Cottage. This means that there would be overlooking towards the south elevation of Bottom Cottage from the two first-floor windows furthest out on the proposed projection. The position of the proposal on higher ground than the neighbouring property means there would also be overlooking from the set of double doors furthest out on the proposed projection. This would cause significant harm to the privacy of the occupiers of Bottom Cottage.

11. The neighbour may not have objected to the principle of an extension; however, they do raise concerns over the effect of the proposal on their privacy. Regardless of this, for the above reasons, the proposal would cause harm to the living conditions of the occupiers of Bottom Cottage.
12. It would therefore conflict with Policy DM1 of the Taunton Deane Core Strategy 2011-2028 (adopted 2012), which aims to protect the amenity of residential areas. Likewise, it would not comply with Policy D5 of the Taunton Deane Adopted Site Allocations and Development Management Plan (adopted 2016), which looks to prevent development that would harm the residential amenity of neighbouring dwellings. The Council's decision refers to Policy CSM4 of the Creech St Michael Parish Council Neighbourhood Development Plan 2018-2028 (adopted 2019). However, this Policy does not appear to relate to living conditions and is therefore not relevant to this issue.

Other Matters

13. The planning permission granted in 2008 considered a proposal for an extension that had a slightly smaller size than the appeal development, had different fenestration and was not in close proximity to the porch. These differences mean that the previously granted proposal, when compared to the appeal proposal, would have been more acceptable in terms of appearance and the privacy granted to the neighbouring property.
14. The desire for the appellant to provide additional accommodation and living space, as well as the challenges of COVID-19, have been considered. However, they would not outweigh the harm caused to the character and appearance of the host dwelling and the living conditions of the occupiers of the neighbouring property.
15. The actions of the Council during the application process do not alter the substantive planning considerations in this appeal.

Conclusion and Recommendation

16. For the reasons given above and having had regard for the Development Plan when it is considered as a whole, I recommend that the appeal is dismissed.

Max Webb

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

K Taylor

INSPECTOR

