

Planning East – Appeal Decisions

Please see below list of appeal decisions made by the Planning Inspectorate between 23rd January 2024 and 21st February 2024.

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

Application Reference	2020/1598/FUL
Site Address	115 Wells Road, Glastonbury, Somerset
Applicant/Organisation	N Kite
Application Type	Full Planning Permission
Proposal	Erection of a bungalow residential dwelling.
Decision	Refusal (Chair)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	31.01.2024



Appeal Decision

Site visit made on 16 January 2024

by **Alexander O'Doherty LLB (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/Q3305/W/23/3318216

115 Wells Road, Glastonbury, Somerset BA6 9AJ

- 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 Neil Kite against the decision of Somerset Council.
 - The application Ref 2020/1598/FUL, dated 19 August 2020, was refused by notice dated 26 September 2022.
 - The development proposed is described on the application form as, "Proposed bungalow north of 115 Wells Road, Glastonbury".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted against the decision of Mendip District Council. Somerset Council has now taken over the functions of Mendip District Council. Somerset Council has therefore been named in the banner header, above.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment and I have taken the comments received into account. I have had regard to the December 2023 version of the Framework in my decision.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site chiefly consists of the rear garden of 115 Wells Road (No 115), a detached 2-storey dwelling. The wider area is varied with respect to its built form, density, and uses, and includes a nearby bungalow (111 Wells Road). However, the primary relationship of No 115 is with the group of dwellings of which it forms a part on Wells Road. Each of these dwellings benefit from long rear gardens which contribute to the spaciousness of the area, as does the large car park associated with a building known as the Waggon & Horses (stated by the appellant as now being in use as an 'Airbnb'), located adjacent to the site.
6. The presence of the wide and deep rear garden at No 115 is particularly noticeable due to its location at the end of the run of dwellings of which it forms a part, and it makes a positive contribution to the spacious character of the area. The large block of garages behind 167 Wells Road and the various

outbuildings behind 169 Wells Road are sufficiently distant from the site so as to not undermine this spacious character. The numerous trees and shrubs present in the rear gardens of the group of dwellings of which the site forms a part, and the trees and area of green space to the rear of the car park associated with the Waggon & Horses building, contribute to the verdant character of the area.

7. In its proposed location to the rear of No 115, whilst the materials of the proposed bungalow would complement nearby dwellings, it would not be in keeping with the largely linear pattern of development along Wells Road of which the site forms a part, which consists of detached and semi-detached dwellings with gardens / driveways directly fronting Wells Road.
8. Due to its large footprint and proposed siting in a rear garden area, it would erode much of the contribution which the site makes to the spacious and verdant character of the area, referred to above, even taking account of the proposed planting and landscaping which could be secured by planning condition. As a single-storey dwelling situated to the rear of No 115, it would also appear as an incongruous addition amongst the array of nearby 2-storey dwellings fronting Wells Road.
9. The comings and goings to the proposed new bungalow, including from vehicles, and the accumulated domestic paraphernalia which would be visible from the rear windows of nearby dwellings on Wells Road, would serve to undermine the established character of the area, where backland development consisting of single dwellings is not commonplace.
10. Merrick Road and Baily Close are cul-de-sacs, each having a legible pattern of development mainly consisting of numerous dwellings directly fronting the road. The block of garages behind 167 Wells Road and the outbuildings behind 169 Wells Road, referred to above, are not perceived in the street scene as comprising independent residential dwellings. As such, these examples are not directly comparable with the proposed development of one new dwelling, which is proposed to be situated in a backland location. They do not change my findings as a result.
11. I therefore find that the proposed development would have an unacceptable and harmful effect on the character and appearance of the area. It would conflict with part 1. of Policy DP1 of the Mendip District Local Plan 2006-2029 – Part 1: Strategy and Policies (adopted 2014) (Local Plan) which provides that, amongst other things, all development proposals should contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district, and with part 1. a) of Policy DP7 of the Local Plan which provides that proposals for new development should demonstrate that they are of a scale, mass, form and layout appropriate to the local context.
12. The proposed development would also conflict with paragraph 135 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Other Matters

13. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.

Planning Balance

14. The Council did not refuse the application on matters relating to highway safety, the living conditions of nearby occupiers, or the living conditions of the future occupiers of the proposed bungalow. I also note that the Inspector in appeal decision Ref APP/Q3305/W/20/3246746 did not find a proposed development of 2 semi-detached dwellings to be unacceptable in relation to these matters. However, even if I were to likewise reason that the proposed development would be in compliance with the development plan and the Framework in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposed development.
15. Whilst I note the size of the garden, the site appears to currently be in residential use, and in this context few details have been provided to show that the rear garden at No 115 is under-utilised in land use terms, with respect to paragraph 124 d) of the Framework. As such, this is a neutral matter, which does not weigh in favour of the proposed development.
16. The appellant has asserted that the Waggon & Horses site will be developed in the near to medium term future. However, as few details have been provided to substantiate this, this matter can only be given very little weight in support of the proposed development.
17. Although reference has been made to the proposed new dwelling being a self-build project (which is supported by the Framework), no mechanism is before me to secure this, which means that only little weight can be given to this matter.
18. The appellant has referred to the potential for a similarly-sized structure to be built under permitted development rights. The evidence indicates that there is a real prospect of this occurring, in the event that this appeal is dismissed. However, whilst in visual terms such a structure could be similar to the proposed bungalow, it would not be occupied as an independent residential dwelling. Hence, its effect on the character of the area in terms of comings and goings and the presence of domestic paraphernalia would not be as pronounced as the proposed development. It would accordingly be less harmful in planning terms than the proposed development. The fall-back position has been given little weight in support of the proposed development as a result.
19. The site is in an accessible location near to Glastonbury town centre. It is common ground between the main parties that the Council currently cannot demonstrate a 5-year supply of deliverable housing sites. The appellant has stated that Mendip District Council's latest 5-year housing land supply position as at October 2022, is that there is a supply of 3.7 years, and this figure has not been disputed by the Council. The proposed development of one new dwelling would provide a very modest contribution to addressing this shortfall. The proposed bungalow would contribute towards housing choice and mix in the local area, especially considering the needs of older people.
20. The proposed development would provide work for construction professionals, and would support the local construction materials supply chain. The future

occupiers of the proposed development would also likely support local services and facilities.

21. The proposed bungalow would be water and energy efficient (including through the use of solar panels), and bicycle storage would be provided, which in combination would help to minimise the proposed development's impact on the environment.
22. The above-mentioned considerations would be in compliance with a number of the Council's development plan policies, including part 1. a. of Core Policy 1 of the Local Plan, which seeks to direct development towards 5 principal settlements, including Glastonbury, and with part 3 of Core Policy 1 which provides that, amongst other things, in identifying land for development the Local Plan's emphasis is on maximising the re-use of appropriate previously developed sites and other land within existing settlement limits as defined on the Policies Map.
23. Taking account of the minimal quantum of one new dwelling in light of the Council's shortfall of deliverable housing sites (which is not severe), and all of the benefits identified above (including the potential exercise of permitted development rights), moderate weight has been given to the proposed development's compliance with the relevant policies of the development plan.
24. The proposed development would have an unacceptable and harmful effect on the character and appearance of the area. Given that it would not ensure that the distinctive character and diversity of places within Mendip is considered maintained and where possible enhanced, as required by paragraph 6.13 of the Local Plan, very significant weight has been given to the proposed development's conflict with the development plan. It follows that the proposed development would conflict with the development plan when considered as a whole.
25. As mentioned above, the Council is currently unable to demonstrate a 5-year supply of deliverable housing sites, meaning that paragraph 11 d) of the Framework is engaged.
26. In this regard, the proposed development would support the Government's objective of significantly boosting the supply of homes, mentioned at paragraph 60 of the Framework. I am also mindful of paragraph 70 of the Framework which provides that, amongst other things, small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. Nevertheless, the overall scale of the economic, social, and environmental benefits of the proposed development would be constrained by the minimal quantum of development, of one new dwelling only, resulting in no more than moderate weight being accorded to these benefits.
27. The proposed development would not support the creation of high quality places. As paragraph 131 of the Framework stresses that this is fundamental to what the planning and development process should achieve, this is a matter of considerable importance, to which I ascribe very significant weight.
28. Balancing the very significant weight of these adverse impacts against the moderate weight given to the collective benefits of the proposed development, the adverse impacts would significantly and demonstrably outweigh the

benefits, when assessed against the policies of the Framework taken as a whole. The proposed development would not benefit from the presumption in favour of sustainable development, found at paragraph 11 of the Framework.

29. Overall, I find that none of the other considerations, which include the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.
30. As mentioned in the first reason for refusal given in the Council's decision notice, the Council has raised concerns in relation to potential impacts arising from an increase in phosphate levels on the Somerset Levels and Moors Ramsar site (including relevant protected species). However, as the appeal is being dismissed for other reasons, there is no need to consider the potential implications of the proposed development in this respect. I therefore make no further comments on this matter.

Conclusion

31. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR

Application Reference	2023/0149/VRC
Site Address	The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset
Applicant/Organisation	Mr & Mrs Stevens
Application Type	Variation/Removal of condition Application to remove conditions 3 (holiday accommodation occupancy and ancillary use (compliance), 4 (operation of holiday let (compliance) of planning approval 2019/1813/FUL.
Decision	Refusal (Delegated)
Appeal Decision	Appeal Allowed
Appeal Decision Date	12.02.2024



Appeal Decision

Site visit made on 18 December 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/Q3305/W/23/3323389

The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset BA4 4AQ

- 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 Mr & Mrs Matthew & Cassia Stevens against the decision of Mendip District Council.
- The application Ref 2023/0149/VRC, dated 27 January 2023, was refused by notice dated 24 March 2023.
- The application sought planning permission for Redevelopment of Existing Workshop with a 3 Bedroom Dwellinghouse, along with Conversion & Extension of Existing Dwellinghouse to Studio/Workspace & Ancillary Accommodation for Tourism or Annexe Use without complying with conditions attached to planning permission Ref 2019/1813/FUL, dated 14 February 2020.
- The conditions in dispute are Nos 3 and 4 which state that:
Condition 3: *'The building shown on drawing number 1392-05A as ancillary accommodation and home workspace shall be used for accommodation ancillary to the dwelling hereby approved or for holiday let use only and shall not be occupied as a person's sole or main place of residence.
In relation to the holiday let an up-to-date register of all occupiers on the site (including their main home address), shall be maintained and this information shall be made available at all reasonable times to the Local Planning Authority.'*
Condition 4: *'The holiday let use hereby approved shall not be operated other than by the occupiers of the new dwelling hereby approved.'*
- The reasons given for the conditions are:
3. *The use of the holiday let as an independent dwelling would require further detailed consideration given the proximity to the host dwelling in terms of amenity and the provision of parking in accordance with Policies CP1, CP3, DP7 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).'*
4. *To allow the Local Planning Authority the opportunity to assess the acceptability of the Holiday let being operated independently in the interests of protecting residential amenity of the occupiers of both properties and providing adequate parking provision having regard for Policies DP7 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).'*

Decision

1. The appeal is allowed and planning permission is granted for Redevelopment of Existing Workshop with a 3 Bedroom Dwellinghouse, along with Conversion & Extension of Existing Dwellinghouse to Studio/Workspace & Ancillary Accommodation for Tourism or Annexe Use at The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset BA4 4AQ in accordance with application Ref 2023/0149/VRC dated 27 January 2023 without compliance with condition numbers 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13 and 14 previously

imposed on planning permission Ref 2019/1813/FUL dated 14 February 2020 and subject to the schedule of conditions below.

Application for costs

2. An application for costs was made by Mr & Mrs Matthew & Cassia Stevens against Mendip District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted under reference 2019/1813/FUL on the 14 February 2020 for the redevelopment of an existing workshop to create a dwelling along with conversion and extension of an existing dwelling to a studio/workshop and ancillary accommodation for tourism or annexe use. The planning permission was subject to conditions. The planning permission has been implemented.
4. On the 27 January 2023 the appellant applied to remove condition numbers 3 and 4. Condition number 3 states that the ancillary accommodation and workspace shall be used for ancillary accommodation or for a holiday let only and shall not be occupied as a person's sole or main place of residence. Condition number 4 states that the holiday let shall not be operated other than by the occupiers of the new dwelling.
5. On the 24 March 2023 the application to remove the conditions was refused by the Council on the basis that the proposal would result in a permanent dwelling in an unsustainable location where residents would be dependent on the use of the car contrary to local plan policies and the National Planning Policy Framework (the Framework). This reason does not relate to the original reasons for imposing the conditions.
6. In light of the above, the main issue is whether consideration of the removal of conditions is confined to the original reasons for imposing the conditions, and if it is not, whether the removal of the conditions would result in a dwelling in an appropriate location, with particular regard to the local development strategy.

Reasons

7. I acknowledge that the reason for refusal does not relate to the original reasons for imposing the conditions and that when imposing conditions clear and precise reasons must be given in accordance with the Framework and Planning Practice Guidance (PPG). I further acknowledge that considerations regarding the removal of conditions usually stem from the reasons given for the conditions when permission was granted. However, consideration of an application to remove conditions must be based on present circumstances regardless of whether an applicant has knowledge of planning or the planning history of a site. As a result, a Council may argue as part of an application to remove conditions that the conditions are necessary for different or additional reasons. This is what the Council have done in this case in relation to condition number 3. As a result, consideration of the removal of conditions is not confined to the original reasons for imposing the conditions.
8. Turning to the location of the appeal site, Core Policies 1 and 2 of the Mendip Local Plan 2006-2029 Part 1: Strategy and Policies (December 2014) (LP) direct new residential development towards the five principal settlements and

to the Primary and Secondary Villages. The site does not fall within one of these settlements.

9. In other villages and hamlets, development may be permitted in line with Core Policy 4 of the LP. Core Policy 4 allows for some limited development in rural settlements and the wider rural area, but the proposal for an unrestricted dwelling does not meet any of the identified circumstances where development would be supported in rural areas.
10. As the removal of condition number 3 would result in an unrestricted dwelling in the countryside, its removal would be contrary to the local development strategy. Moreover, the appeal site is in a location that is remote from a range of services and facilities with the access roads generally narrow, unlit and without pavements. As a result, walking and cycling to services and facilities would not be attractive to the majority of people who would be reliant upon the use of the car contrary to Policy DP9 of the LP that supports proposals where they 'make safe and satisfactory provision for access by all means of travel (particularly by means other than the private car)'.
11. With regard to condition number 4, I note that the Council state that they have no concerns with the removal of this condition and would have granted its removal had they been able to issue a split decision. On the basis of the presence of a high fence and public footpath between the dwellings, separate parking provision and outdoor space of usable sizes, and separation distance between Forge Cottage and Forge House, the removal of condition number 4 would not result in significant harm to the living conditions of either occupiers.
12. Whilst I also agree with the parties that no harm would arise by reason of the original reason for imposing condition number 3 due to the separation distance and provision of suitable parking, this does not outweigh the concerns raised above in relation to the location of the appeal site.
13. It follows therefore that although the removal of condition number 4 would be acceptable, the removal of condition number 3 would result in a dwelling in an inappropriate location, with particular regard to the local development strategy. As such, the removal of condition number 3 is contrary to Core Policies 1, 2, 4 and 9 of the LP.

Other Considerations and Planning Balance

14. I have taken into account the lack of objections to the proposal from third parties and the Parish Council, but this is neutral in my consideration. I have also had regard to the lack of other concerns with the proposal with regard to design, impact upon the street scene, living conditions and highway safety. However, these matters are requirements of local and national planning policy and as such are also neutral in my consideration.
15. The appellant raises concerns regarding the lack of engagement and conduct of the Council during its consideration of the planning application. However, these are not matters which are for consideration in this appeal.
16. The removal of condition number 3 would be contrary to the local development strategy due to the location of the site resulting in reliance upon the use of the car. The relevant policies are largely consistent with the Framework where it states that planning decisions should guide development towards sustainable solutions. Therefore, the proposed development would be contrary to the

development plan as a whole and I give significant weight to the conflict with these policies.

17. The Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 7, paragraph 11 d) ii. of the Framework should be applied. The appeal proposal would provide a number of benefits, including much needed open market housing which would contribute towards the supply and mix of two-bedroom dwellings in a location that I have been advised is not constrained by phosphates entering the Somerset Levels RAMSAR site. However, given the scale and nature of the development, the benefits would be limited. In contrast, I have found that the appeal proposal would result in significant harm to the local development strategy. Accordingly, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

Conditions

18. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The conditions have been amended from the conditions on the original planning permission to reflect the implementation of the consent.
19. As the planning permission has been implemented, there is no need for a time limit condition (Condition No. 1 of planning permission Ref: 2019/1813/FUL). However, a condition listing the approved plans is again necessary for the avoidance of doubt and becomes condition number 1.
20. In light of my findings above, condition number 3 is necessary but becomes condition number 2 and I have amended the wording to reflect the plans before me. Condition number 4 is removed.
21. The wording of original condition number 5 is amended to ensure the retention of parking and turning spaces given that the development has been occupied. This becomes new condition number 3.
22. There was no condition number 6 on the original permission, but original condition numbers 7 required submission and retention of details related to the provision of a bat box. Whilst condition number 7 has been discharged, the original condition required the bat box to be retained in perpetuity. As a result, I have amended the wording of the condition to reflect this, and it becomes new condition number 4.
23. Original condition number 8 requiring works affecting bats to proceed under the supervision of an ecologist has been complied with so is no longer necessary. Original condition number 9 ensuring that any external lighting is provided such that it does not harm bats is again required in the interests of protecting biodiversity. This becomes new condition number 5.
24. Original condition number 10 required works to take place between 1st March and 30th September but as the development has been constructed, this condition is no longer necessary.
25. Original condition numbers 11 and 12 required submission and retention of details related to the provision of bat boxes and provision for nesting swallows.

As these conditions have not been complied with, they are amended and re-imposed to ensure that the bat boxes and provision for nesting swallows are approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and provision of the details before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met. These become new condition numbers 6 and 7.

26. As the original development has been implemented and occupied, there is no need for the remaining original condition numbers 13 and 14.

Conclusion

27. For the reasons set out above condition number 3 is reasonable and necessary and should therefore remain subject to amended wording. However, condition 4 is not required to make the development acceptable and therefore does not meet the tests as set out in paragraph 56 of the Framework. Therefore, the appeal is allowed by amending condition 3 and deleting condition 4 as set out in the decision paragraph above.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1595-01A Existing Location Plan Drawing; 1595-02A Existing Block Plan Drawing; 1595-03A Existing Site Plan Drawing; 1595-04A Existing Cottage Floor Plans; and 1595-05A Existing Cottage Elevations.
- 2) The building shown on the approved plans as The Forge Cottage shall be used for accommodation ancillary to The Forge House or for holiday let use only and shall not be occupied as a person's sole or main place of residence.

In relation to the holiday let an up-to-date register of all occupiers on the site (including their main home address), shall be maintained and this information shall be made available at all reasonable times to the Local Planning Authority.
- 3) The access, parking and turning areas shown on the approved plans shall be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.
- 4) The bat box provided to the building as detailed in the photographs and associated email dated 8 April 2020 shall be retained in perpetuity.
- 5) No external lighting shall be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the Local Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All

external lighting shall thereafter 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.

No new external lighting, other than that shown on the approved plans, shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

- 6) Unless within 3 months of the date of this decision details of a scheme for provision for nesting swallows have been submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 2 months of the Local Planning Authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented. Upon implementation of the approved scheme, it shall be retained thereafter in accordance with the approved details. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.
- 7) Unless within 3 months of the date of this decision two Beaumaris Woodstone maxi bat boxes or similar have been mounted under the eaves, at least 4 metres above ground level and away from windows on the south west elevation of the dwelling hereby approved, the use of the site shall cease until such time as the bat boxes have been provided. Upon implementation of the bat boxes, they shall be retained thereafter in perpetuity. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

*****END OF SCHEDULE*****

Application Reference	2022/0932/VRC
Site Address	Churh Farm, Frome Road, Rode, Somerset
Applicant/Organisation	Autograph Homes
Application Type	Variation / Removal of Conditions Variation of condition 9 (Estate Roads), condition 13 (Housing Land Access), condition 15 (Pedestrian Access), condition 17 (Housing Land Drainage Scheme), condition 20 (Tree and Hedge Protection), condition 24 (Noise Mitigation), condition 25 (Construction Environmental Management Plan), condition 29 (Housing Land Parking), condition 34 (Housing Land Refuse and Recycling), condition 35 (Ecological Mitigation), condition 38 (Housing Land Materials) and condition 49 (Housing Land Sample Panel) of permission 2011/3124.
Decision	Refusal (Chair)
Appeal Decision	Appeal Allowed
Appeal Decision Date	21.02.2024



Appeal Decision

Site visit made on 18 July 2023

by **Martin Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/Q3305/W/22/3312171

Church Farm, Frome Road, Rode, BA11 6PW

- 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 Autograph Homes against the decision of Mendip District Council.
 - The application Ref 2022/0932/VRC, dated 4 May 2022, was refused by notice dated 12 October 2022.
 - The application sought planning permission for the Demolition of existing buildings at Church Farm, Rode (except buildings in the conservation area), and redevelopment of the site for 44 dwellings and associated public open space and improved access. Development of land off Parkgate Lane for a replacement farmyard incorporating 8700m² of new and replacement employment floor space for the use of agriculture, haulage, building supplies, agricultural storage, food production and ancillary uses together with widening of Parkgate Lane and provision of a new access; and change of use of part of an agricultural field to form an extension to the existing playing field. Provision of two new footpath/cycleways from Church Farm to Church Lane and playing field extension to Church Lane (Access only to be considered, all other matters reserved for subsequent consideration) (amended plans received 05/12/12) without complying with conditions attached to planning permission Ref 2011/3124, dated 10 February 2014.
 - The conditions to which variations are sought are Nos 9, 13, 15, 17, 20, 24, 25, 29, 34, 35, 38 and 40, which are set out at the end of this decision in the attached Appendix.
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Decision

1. The appeal is allowed and planning permission is granted for Demolition of existing buildings at Church Farm, Rode (except buildings in the conservation area), and redevelopment of the site for 44 dwellings and associated public open space and improved access. Development of land off Parkgate Lane for a replacement farmyard incorporating 8700m² of new and replacement employment floor space for the use of agriculture, haulage, building supplies, agricultural storage, food production and ancillary uses together with widening of Parkgate Lane and provision of a new access; and change of use of part of an agricultural field to form an extension to the existing playing field. Provision of two new footpath/cycleways from Church Farm to Church Lane and playing field extension to Church Lane (Access only to be considered, all other matters reserved for subsequent consideration) at Church Farm, Frome Road, Rode, BA11 6PW in accordance with the terms of the application, Ref 2022/0932/VRC, dated 4 May 2022, subject to the conditions as set out in the attached Schedule.

Applications for costs

2. Applications for costs were made by Mendip District Council against Autograph Homes, as well as by Autograph Homes against Mendip District Council. These applications are the subject of separate decisions.

Background and Main Issue

3. The application sought to amend several conditions attached to a previous planning permission, in the interest of clarity. The Council raise no issue with this and accept the proposed amendments. However, in addition to amending the wording of these conditions, the appellant also sought to revisit the requirements of a previously completed S106 planning obligation, principally in respect of the affordable housing provision within the development. It is with this element of the proposal against which the Council raise objections.
4. The completed planning obligation secured a 30% provision of affordable units. The appellant now seeks to reduce this provision to 25%. On this basis, the main issue for me to consider is whether the scheme would make appropriate provision for affordable housing, having regard to development viability.

Reasons

Policy

5. The Council's approach to seeking affordable housing provision within new development is set out in Policy DP11 of the Mendip District Local Plan, Part 1: Strategy and Policies (adopted December 2014). This sets out that on-site provision will be sought on residential developments of seven or more dwellings, or sites larger than 0.25 hectares, and that proposals are required to make provision for 30% of the total number of new homes to be provided in affordable tenures. The policy also states that where proposals cannot viably deliver the required provision, that there will be negotiation on the matters of tenure, subsidy design and the amount of provision.
6. The reasoned justification to this policy further provides, in terms of development viability, that:

"The Council is mindful that in setting a district-wide target, the characteristics of individual sites and local market conditions can impact on site viability. Where specific viability issues are identified, and evidenced by an applicant in relation to individual development proposals, this will be taken into account when considering that proposal. Where the applicant cannot fulfil the policy requirements set out in this policy (in respect of on-site provision or contributions), the applicant would need to demonstrate that viability is a consideration through the preparation and submission of a financial appraisal."

as well as,

"The Council is mindful that the housing market is subject to rises and falls in profitability and that this can impinge upon the delivery of housing by house builders or result in under delivery of affordable homes where market conditions have improved since the planning obligation was agreed."

and,

"The Council's primary aim is to increase the level of affordable housing available to meet the needs of the local resident population."

Assessment

7. At the time of the original planning application, a S106 planning obligation was signed and completed that secured the provision of 30% affordable housing within the development, this equated to the delivery of thirteen units within the appeal site. Based on the original financial viability assessment, this would enable the developer to realise a 18.73% profit on the gross development value (GDV), well within the range of 15-20%¹ which the Planning Practice Guidance (PPG) advises may be considered a suitable return for developers (for the purpose of plan making). It is also worth noting that the PPG additionally states, "A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk."
8. The development has now been built out, with all open market dwellings having been disposed of, as well as all but two of the affordable housing units also being disposed of. Thus, there remain only two dwellings that the developer retains, two bungalows that are also (under the requirements of the existing obligation) required to be affordable housing units. It is the fate of these two units with which this appeal is concerned.
9. The appellant asserts that during the development there have been a number of factors that have influenced the financial viability of the development, principally contended to be the impacts of the Covid-19 pandemic and Brexit.
10. Development commenced in January 2019, when the appellant highlights that market conditions were normal, and it was expected that the intended return of circa 18% was achievable. Work on site then ceased in March 2020, due to the national lockdown, with work then re-starting and personnel being brought back onto site in the summer and autumn of 2020. From this time on, the appellant contends that full production rates were not achieved, due to the loss of trades and construction requirements having to respond to bank funding cashflow requirements. This reduction in construction rate consequently resulted in a reduced sales rate of the dwellings.
11. Moreover, the appellant states that following the end of the UK's transition period following leaving the European Union, there was consequential disruption to the import, availability, and pricing of materials, further impacting financial viability.
12. In support of the above, the appellant has submitted additional financial viability information to demonstrate that the profit on GDV has reduced significantly as the development has progressed, and now sits at 3.6%. In order to re-coup some of the previously expected profits, the appellant seeks to reduce the affordable housing provision from 30% to 25%, omitting the two remaining dwellings from the on-site provision and then selling them on the open market. This would thereby enable the developer to increase their return on the development.

¹ Paragraph: 018 Reference ID: 10-018-20190509

13. The principal consideration in these terms is whether the development is viable with the 30% affordable housing provision or whether this should be reduced to 25%.
14. When considering this, I am mindful of the guidance of the PPG, which states that: *"As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer,"*²
15. I accept that since the grant of the planning permission and the agreement to the requirements of the planning obligation, that there have been economic changes which have affected the financial return that the developer will realise from the development. However, there is always a level of risk associated with undertaking development of this scale and type. This is inherently considered in viability assessments and accounted for in the expected developers return. While in this case, the difference between expected and actual return is not insignificant, to my mind, this is not an unusual risk and is part of the risk-versus-reward arrangement of undertaking such schemes. There will be occasions where profitability will reduce during the course of the development, such as in this case, but conversely there may well also be occasions where profitability will increase.
16. I am also particularly mindful in this case, that the vast majority of the development has already been delivered and sold, with only two dwellings yet to be disposed of. Much of the rationale for the level of profit that is initially expected is to ensure that there is sufficient incentive for schemes to be delivered. This has already taken place in this case and consequently, there is no risk that the scheme will not come forward. This also applies to the remaining two units that are yet to be occupied, about which there is no indication that they will not be completed and delivered.
17. Bearing in mind therefore that the Council's priority is to increase the provision of affordable housing to meet the needs of the local population, together with the advice of the PPG that the purpose of reviewing viability is not to protect the profits of a developer, I find that to reduce the affordable housing provision at this late stage would not be acceptable. To do so would conflict with Policy DP11 of the Mendip District Local Plan, Part 1: Strategy and Policies, as well as the advice of the PPG.

Other Matters

18. I am aware that there has been a previous application to modify the planning obligation. This however was a separate matter from that which is before me as part of this appeal.
19. There is also the contention that some obligations have not been met by the developer in regard to the existing planning obligation. This is not a matter however that influences my decision, as the enforcement of any existing agreement is a matter for the Council.
20. My attention has been drawn to several previous appeal decisions, most notably one where an Inspector considered that the mere fact that work

² Paragraph: 009 Reference ID: 10-009-20190509

continued on-site was not a reason to ignore viability evidence. However, that decision makes clear that work was still ongoing on site, albeit that it is not said how far the development had advanced. A further case where work had commenced is also cited. In this case, all structures are built, and it is just the handover of the units that remains. As such, I do not find the situation in this appeal to be sufficiently comparable to those set out in the previous decisions to which I have been referred. Thus, none of the decisions change my findings above.

21. The appellant has drawn my attention to a letter from the Secretary of State in which it is stated that "*councils should be open and pragmatic in agreeing changes to developments where conditions mean that the original plan may no longer be viable, rather than losing the development wholesale or seeing development mothballed.*" While this is noted, in this case, there is no prospect of the development not being delivered or being mothballed, as it has already been built out. As such, this matter has little bearing on my decision.

The Legal Agreement

22. The original planning permission was subject to an agreement made under S106 of the Act. This secured the provision of the affordable housing, as well as matters in respect of public open space, playing fields, public access, employment land, phasing, surface water drainage, education, travel plans, and highways improvements. This original agreement has also been subsequently amended through deeds of variation.
23. The appeal is accompanied by a further Supplemental Agreement made under Section 106, which comes into effect upon the grant of any permission pursuant to this appeal. It also secures that the original deed (i.e., the original legal agreement) will apply to any permission that is granted subject to this appeal. As such, there is a safeguard in place to ensure that any permission I may grant is effectively tied to the existing agreement.
24. There has been reference to flexibility in respect of the education contribution that is secured by the planning obligation. This matter is not part of the reason for refusal of the application. The Supplemental Planning Agreement provides that should the appeal be allowed, that the obligations requiring the last 50% of the education contribution to be paid shall no longer be of any effect. However, there is little evidence before me to convince me that the education contribution should not be delivered as set out in the original planning agreement. As such, I find no reason to agree to this amendment of the obligation.
25. The Supplemental Agreement includes a "blue pencil clause" which states that should I find that any modification in the agreement should not be permitted, the planning obligation as set out in the original agreement shall continue to have effect. Considering my findings above, I find that the modification in respect of the provision of affordable housing, as set out in the Schedule of the Supplemental Agreement should not be permitted. Similarly, the modification in respect of education contributions also should not be permitted. Therefore, pursuant to paragraph 6.2 of the Supplemental Agreement, the modifications in respect of these matters shall have no effect.

Conditions

26. The application made under Section 73 was in respect of a previously granted outline planning permission. In considering this appeal, I have the option to grant either a new outline planning permission, or a new full planning permission. However, in this case, the description of development as set out in the original planning permission specifically refers to access only being for consideration, with all other matters reserved for subsequent consideration. If I were to grant a new full planning permission, referring to all detailed matters, this would conflict with the operative part of the permission, i.e., the description of development. As such, I am only able to grant a new outline permission. I shall therefore only amend the specific conditions referred to in the application.
27. I note that within the Council's Case Officer Report, there is reference to other conditions that contain triggers that have passed. However, no details have been given in respect of these. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

28. The part of the proposal to reduce the provision of affordable housing would conflict with the development plan as a whole, and there are no material considerations sufficient to indicate that a decision on this matter should be taken other than in accordance with it. However, for the reasons set out above, I am able to grant a new planning permission, varying the conditions as sought by the application but without agreeing to the proposed amendments to the legal agreement.
29. Therefore, for these reasons, and having regard to all matters raised, I conclude that the appeal should be allowed, and that planning permission should be granted, without the requested amendments to the planning obligations.

Martin Allen

INSPECTOR

Schedule of Conditions

1. The dwellings hereby approved shall be constructed only on the Housing Land, that being the area shaded orange on Plan 5 appended to this decision and hereinafter referred to as the Housing Land.
2. The agricultural and employment floorspace hereby approved shall be constructed only on the Employment Land, that being the area shaded brown on Plan 2 appended to this decision and hereinafter referred to as the Employment Land.
3. The development on the Employment Land hereby approved shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved relating to the Employment Land, whichever is the latest.
4. The development on the Housing Land hereby approved shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved relating to the Housing Land, whichever is the latest.
5. Approval of the details of the (a) layout (b) scale (c) appearance and (d) landscaping of the Employment Land (hereinafter called the Employment Land reserved matters') shall be obtained from the Local Planning Authority in writing before the Employment Land is commenced.

Approval of the details of the (a) layout (b) scale (c) appearance and (d) landscaping of the Housing Land (hereinafter called the Housing Land reserved matters') shall be obtained in writing from the Local Planning Authority before the Housing Land is commenced.

6. Plans and particulars of the Employment Land reserved matters and the Housing Land reserved matters referred to in condition 05 above shall include when relevant details of:
 - a. the provision to be made for the garaging and parking of vehicles within the site;
 - b. the space to be provided for the loading, unloading and turning of vehicles within the site including LGVs;
 - c. the surface treatment of the footways and cycle paths;
 - d. all external materials to be used;
 - e. existing and proposed ground and floor levels;
 - f. details of all walls, fences, trees, hedgerows and other planting which are to be retained;
 - g. details of all new walls, fences and other boundary treatments;
 - h. a planting specification to include numbers, positions, species and size of all new trees and the location of grassed areas and areas for shrub planting;
 - i. details of the hard surface treatment of the open parts of the site;
 - j. a programme of implementation of landscaping works for each part of the sites.

7. The development hereby permitted shall be carried out in accordance with drawing numbers Unnumbered Site Boundary drawing, 102-PL-Fig 07, 102-PL-Fig 11, 102a-PL-Fig 07A, 102a-PL-Fig 07C, 102a-PL-Fig 11A, 102a-PL-Fig 078, 102a-PL-Fig 118.
8.
 - a..The total gross floorspace of all buildings constructed on the Employment Land shall not exceed 8,700 square metres, of which no more than 893 square metres shall be used for purposes falling within Use Class B8 of the Use Classes Order 1987 (as amended)
 - b..Of the remainder no more than 1500 square metres shall be used for the purposes of storage of agricultural products and such area shall not be used for any other purpose falling within Class B8 of the Use Classes Order other than such agricultural storage.
 - c..All floorspace not used for uses within Class B8 under paragraphs or a. or b of this condition shall be used only for the purposes of agriculture and for no other use.
 - d. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) the Employment Land shall be used only as set out in paragraphs a. , b. and c. of this condition shall not be used for any purpose other than those specified in the said paragraphs
 - e. All non agricultural uses on the Employment Land shall be integral to the agricultural use of the Employment Land.
9. Estate roads relating to the Housing Land shall be completed in accordance with details as approved under application 2018/2218/APP on 18.07.2019.
10. The proposed roads, footpaths and turning spaces relating to the Housing Land shall be completed such that each dwelling before it is occupied is served by a properly consolidated and surfaced footpath and carriageway.
11. No works shall commence on the Employment Land (other than archaeological investigation) until all works to provide access from the site to the A361 Frome Road, including any road widening, have first been completed in accordance with a design and specification that has first been submitted to and approved by the Local Planning Authority.
12. The Employment Land shall not be first occupied/brought into use until the access from the site onto the public highway has been completed in the approved location in accordance with a detailed design and specification that has first been submitted to and approved by the Local Planning Authority.
13. The works to the access from the Housing Land onto the A361 shall be maintained in accordance with the details approved under application 2018/2218/APP on 18.07.2019.

14. No vehicular accesses to serve either the Housing Land or the Employment Land shall be formed other than those shown on the approved plans Fig 07 and Fig 11.
15. The development shall be retained and maintained in accordance with the details of pedestrian access, approved under application 2018/2218/APP on 18.07.2019, received 07.09.2018.
16. No works shall commence on the Employment Land (other than archaeological investigation, site clearance or remediation) until a surface water drainage scheme for that land has first been submitted to and approved by the LPA. The scheme shall include details of gullies, connections, soakaways and means of attenuation on site. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development and shall include details of any phasing of the surface water drainage infrastructure and how the scheme shall be maintained and managed after completion. No part of the Employment Land shall be first occupied or brought into use until the surface water drainage scheme for the Employment Land has been fully implemented in accordance with the approved details and is operational.
17. The surface water drainage scheme for the Housing Land shall fully accord with details approved under application 2018/2218/APP on 18.07.2019.
18. All hard and soft landscape works relating to the Housing Land shall be carried out in accordance with the approved details. The works approved for the Housing Land shall be carried out prior to the occupation of any dwelling or in accordance with an alternative programme of implementation that has first been agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority.
19. All hard and soft landscape works relating to the Employment Land shall be carried out in accordance with the approved details. The works approved for the Employment Land shall be carried out prior to the occupation of any part of the Employment Land or in accordance with an alternative programme of implementation that has first been agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority.
20. The development shall be maintained in full accordance with the tree protection details, approved under application 2015/1776/APP on 23.11.2015.
21. No site works or clearance shall be undertaken on the Employment Land until protective fences which conform with British Standard 5837:2012 have been erected around any existing trees and other existing or proposed

landscape areas in positions to be indicated on plans to be first submitted to and approved in writing by the Local Planning Authority. Until the development has been completed these fences shall not be removed and the protected areas are to be kept clear of any building, plant, material, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for approved arboricultural or landscape works.

22. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence on the Housing Land until parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until part D of this condition has been complied with in relation to that contamination.

A. Site characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme shall be submitted to and approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
- (iii) Human health,
- (iv) Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwater's and surface waters, ecological systems, archaeological sites and ancient monuments;
- (v) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

B. Submission of remediation scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, submitted to and approved in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

C. Implementation of approved remediation scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

D. Reporting of unexpected contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.

23. If at any time during the development unexpected contamination is found on the Employment Land then no further development shall be carried out until the developer has submitted to, and had written approval from the Local Planning Authority for, a remediation strategy detailing how this will be dealt with. The remediation works shall thereafter be fully implemented in accordance with an agreed timetable.
24. The development shall be maintained in full accordance with the details for noise mitigation measures approved under application 2020/2476/APP on 07.01.2021.
25. The development shall be maintained in full accordance with the details for clearance, remediation and construction approved under application 2018/2218/APP on 18.07.2019.
26. The Employment Land hereby approved shall not be first occupied or brought into use until details of the location, type and maximum height of materials and equipment to be stored externally within the Employment Land has first been submitted to and approved by the LPA. All external storage shall thereafter be in accordance with the approved details. For the avoidance of doubt, this requirement does not apply to external storage of materials in use for construction of the development hereby approved on the Employment Land.
27. No works (other than that required by this condition) shall be undertaken on the Employment Land unless a programme of archaeological work, including excavations, has been implemented in accordance with a written scheme of investigation which has been first submitted to and approved in writing by the Local Planning Authority.

28. No part of the Employment Land shall be occupied nor the use commenced until provision has been made within the Employment Land for the parking, turning, loading and unloading of vehicles and the parking of cycles and motorcycles to serve the Employment Land, in accordance with details that have first been submitted to and approved by the Local Planning Authority as part of the reserved matters submission for the Employment Land. Such areas shall not thereafter be used for any purpose other than the parking, turning, loading and unloading of vehicles associated with the Employment Land.
29. The development shall be maintained in full accordance with the details for the parking and turning of cars, cycles and motorcycles to serve the Housing Land approved under application 2019/2560/APP on 18.07.2019.
30. The Employment Land hereby approved shall not be occupied or brought into use unless details of the maximum number of large goods vehicles (LGV's) proposed to be parked on the site have first been submitted to and approved by the Local Planning Authority, which may be as part of a reserved matters approval for the layout of the Employment Land. Thereafter there shall not at any time be more than the approved maximum number of large good vehicles parked on the site. Such vehicles shall only be parked within the part of the site designated for such purposes in accordance with the approved layout.
31. No external storage shall take place on the Employment Land other than in areas that have first been submitted to and approved by the Local Planning Authority as part of a reserved matters approval for the layout of the Employment Land. For the avoidance of doubt "external storage" shall not include storage of materials during construction of the buildings hereby approved on the Employment Land.
32. No external lighting shall be erected, placed or operated on any part of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Under no circumstances shall external illumination be operated on the site other than in accordance with the approved scheme.
33. No part of the Employment Land hereby approved shall be occupied unless refuse and recycling storage provision for the Employment Land has first been provided and made available for use in accordance with details that have first been submitted to and approved by the Local Planning Authority. The refuse storage provision shall be permanently retained thereafter in accordance with the approved details.
34. The development shall be maintained in full accordance with the details for the refuse and recycling storage provision for the Housing Land approved under application 2018/2218/APP on 18.07.2019.
35. The development shall be maintained in full accordance with the details of ecological mitigation measures for the Housing Land including an implementation programme approved under application 2015/1776/APP on 23.11.2015.

36. No works (including demolition) shall commence on the Employment Land until details of ecological mitigation measures for the Employment Land, including an implementation programme, have been submitted to, and approved in writing by, the LPA. The development shall be carried out in accordance with the approved details.
37. No works shall be undertaken on the Employment Land unless samples of the materials to be used in the construction of the external surfaces, including roofs of all buildings and structures within the Employment Land, have been submitted to and approved in writing by the Local Planning Authority. The works for the Employment Land shall thereafter be carried out only in accordance with the details so approved.
38. The external facing materials shall be maintained in full accordance with the Materials Schedule approved under application 2019/1572/APP on 30.10.2019.
39. No works shall be undertaken on the Employment Land (other than for site clearance, archaeological investigation, remediation of contamination and/or construction of accesses) unless a sample panel of any stonework and/or render to be used on the external surface of any building or structure in the Employment Land has first been within the Employment Land and approved in writing by the Local Planning Authority. The sample panel shall be kept on site for reference until the Employment Land is completed. The works shall thereafter be carried out only in accordance with the details so approved.
40. The external walling materials shall be maintained in full accordance with the Materials Schedule approved under application 2019/1572/APP on 30.10.2019.

End of Schedule

Appendix - Conditions to which variations are sought

9. Any approved estate roads relating to the Housing Land shall be completed in accordance with details and a programme of works that have been first submitted to and approved by the Local Planning Authority
Reason: To ensure adequate access is provided to the dwellings hereby approved having regard to Saved Policy Q3 of the Mendip District Local Plan 2002
13. No dwelling hereby approved shall be occupied until the works to the access from the Housing Land onto the A361 have first been completed in the approved location in accordance with a detailed design and specification that has first been submitted to and approved by the Local Planning Authority. The design and specification shall include all associated works to the A361.
Reason: In the interests of highway safety having regard to Saved Policy Q3 of the Mendip District Local Plan 2002
15. No pedestrian accesses shall be formed to serve either the Housing Land or the Employment Land unless in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority (which may be as part of the reserved matters submission(s) for layout of the Housing Land and Employment Land).
Reason: In the interests of highway safety having regard to Saved Policy Q3 of the Mendip District Local Plan 2002
17. No works shall commence on the Housing Land (other than demolition, site clearance or remediation) until a surface water drainage scheme for that land has first been submitted to and approved by the LPA. The scheme shall include details of gullies, connections, soakaways and means of attenuation on site. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development and shall include details of any phasing of the surface water drainage infrastructure and how the scheme shall be maintained and managed after completion. No dwelling shall be occupied until the surface water drainage scheme for the Housing Land has been fully implemented in accordance with the approved details and is operational.
Reason: To prevent flooding having regard to Saved Policy EN17 of the Mendip District Local Plan 2002 and the National Planning Policy Framework
20. No site works or clearance shall be undertaken on the Housing Land until protective fences which conform with British Standard 5837:2012 have been erected around any existing trees and other existing or proposed landscape areas in positions to be indicated on plans to be first submitted to and approved in writing by the Local Planning Authority. Until the development has been completed these fences shall not be removed and the protected areas are to be kept clear of any building, plant, material, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for approved arboricultural or landscape works.
Reason: To safeguard the areas to be landscaped and the existing trees and planting to be retained within the site having regard to the provisions of Saved Policies Q1, Q4 and EN5 of the Mendip District Local Plan 2002.

24. No dwelling shall be occupied unless all noise mitigation measures have first been installed/implemented for that dwelling in accordance with details that have first been submitted to and approved by the LPA. Such measures shall be designed to mitigate the effects of noise from the A361 and shall include glazing specification, additional acoustic ventilation details, acoustic barriers, roof insulation. The mitigation measures shall be designed to ensure that habitable rooms which front the A361 meet the "good" standard defined in BS8233 Sound insulation and noise reduction for buildings - Code of practice.
Reason: To safeguard the amenities of the occupiers of those dwellings from road noise having regard to Saved Policies Q1 and Q12 of the Mendip District Local Plan 2002.
25. No works shall commence on the Housing Land until a Construction Environmental Management Plan (CEMP) has first been submitted to and approved by the Local Planning Authority. The CEMP shall include measures to mitigate impacts on neighbouring residential properties during clearance of the site and construction of new development, including hours of working, noise and vehicle management measures, and measures to control dust, odour or other pollution. All works for clearance, remediation and construction on that part of the site shall thereafter be carried out in accordance with the CEMP.
Reason: To safeguard the amenities of the occupiers of neighbouring properties from road noise having regard to Saved Policies Q1 and Q12 of the Mendip District Local Plan 2002.
29. The dwellings hereby approved shall not be occupied until space has been laid out within the Housing Land for the parking and turning of cars, cycles and motorcycles to serve the Housing Land in accordance with details that have first been submitted to and approved by the Local Planning Authority as part of the reserved matters submission for the Housing Land. Such areas shall not thereafter be used for any purpose other than the parking and turning of cars, cycles and motorcycles associated with the Housing Land.
Reason: To make provision for parking and turning having regard to Saved Policy Q3 of the Mendip District Local Plan 2002 and the Somerset Countywide Parking Strategy
34. No part of the Housing Land hereby approved shall be occupied unless refuse and recycling storage provision for the Housing Land has first been provided and made available for use in accordance with details that have first been submitted to and approved by the Local Planning Authority. The refuse storage provision shall be permanently retained thereafter in accordance with the approved details.
Reason: To ensure that adequate refuse and recycling storage provision is provided in the interests of visual amenity having regard to Saved Policy Q1 of the Mendip District Local Plan 2002.
35. No works (including demolition) shall commence on the Housing Land until details of ecological mitigation measures for the Housing Land, including an implementation programme, have been submitted to, and approved in writing by, the LPA. The development shall be carried out in accordance with the approved details.
Reason: To safeguard protected species and other wildlife and to prevent a net loss of biodiversity on and around the site having regard to Saved Policies EN3

and EN4 of the Mendip District Local Plan and the provisions of the National Planning Policy Framework

38. No works shall be undertaken on the Housing Land unless samples of the materials to be used in the construction of the external surfaces, including roof, of all buildings and structures within the Housing Land, have been submitted to and approved in writing by the Local Planning Authority. The works relating to the Housing Land shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of visual amenity having regard to Saved Policy Q1 of the Mendip District Local Plan 2002.

40. No works shall be undertaken on the Housing Land (other than for site clearance, archaeological investigation, remediation of contamination and/or construction of accesses) unless a sample panel of any stonework and/or render to be used on the external surface of any building in the Housing Land has first been erected on that part of the site and approved in writing by the Local Planning Authority. The sample panel shall be kept on site for reference until the Housing Land is completed. The works shall thereafter be carried out only in accordance with the details so approved.

Reason: In the interests of visual amenity having regard to Saved Policy Q1 of the Mendip District Local Plan 2002.