

## Planning East – Appeal Decisions

Please see below list of appeal decisions made by the Planning Inspectorate between 16<sup>th</sup> November 2024 and 19<sup>th</sup> December 2024.

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

<b>Application Reference</b>	<b>2023/1332/OUT</b>
<b>Site Address</b>	<b>Land at Somer Lea, The Street, Chilcompton</b>
Applicant/Organisation	R Thorner, Flower & Hayes Ltd
Application Type	Outline Application
Proposal	Application for Outline Planning Permission with all matters reserved for up to 7no. dwellingshouses. (Resubmission of 2019/3014/OTA).
Decision	Refusal (Delegated)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	18.11.2024
<b>Application Reference</b>	<b>2022/0285/FUL</b>
<b>Site Address</b>	<b>Blostins Restaurant, 29-33 Waterloo Road, Shepton Mallet</b>
Applicant/Organisation	N & L Reed
Application Type	Full Planning Permission
Proposal	Part Change of use from restaurant Class E(b) to residential Class C3
Decision	Refusal (Delegated)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	22.11.2024
<b>Application Reference</b>	<b>2023/1036/FUL</b>
<b>Site Address</b>	<b>Land North of Wallbridge Gardens, Frome</b>
Applicant/Organisation	D Kelley, DJ Kelley Homes Ltd
Application Type	Full Planning Permission
Proposal	Erection of 1no. dwellinghouse.
Decision	Refusal (Planning Committee)
Appeal Decision	Appeal Allowed
Appeal Decision Date	22.11.2024

<b>Application Reference</b>	<b>2024/0253/PAA</b>
<b>Site Address</b>	<b>Barn at Newman Street, Doultong, Shepton Mallet</b>
Applicant/Organisation	M Lambert
Application Type	Prior Approval
Proposal	Prior Approval for a proposed change of use of agricultural building to a dwellinghouse (Class C3) and for associated operational development.
Decision	Refusal (Delegated)
Appeal Decision	Appeal Allowed
Appeal Decision Date	05.12.2024



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## Appeal Decision

Site visit made on 28 October 2024

**by J J Evans BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 November 2024**

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**Appeal Ref: APP/E3335/W/24/3338836**

**Land east of Somer Lea, The Street, Chilcompton, Radstock, Somerset BA4 3HE**

- 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 Mr R Thorner of Flower and Hayes Ltd against the decision of Somerset Council.
  - The application reference is 2023/1332/OUT.
  - The development proposed is the erection of residential development up to 7 dwellings, new highway accesses, ancillary buildings and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The original application was for outline planning permission, with all matters reserved, albeit a drawing was submitted that depicts a layout and section (drawing ref: 191\_SK\_13). Both the Council and the appellant have referred to this drawing as being illustrative, with all matters being reserved. For the avoidance of doubt I have considered the appeal on the same basis, that is, all matters being reserved for future consideration.

### Main Issues

3. The main issues in this case are:-
  - the effect of the proposal upon the character and appearance of the area;
  - whether the site would be in a suitable location for residential development having regard to national and local planning policy; and
  - whether the proposal would result in an unacceptable flood risk.

### Reasons

#### *Character and Appearance*

4. The appeal site is positioned to the eastern side of a residential cul-de-sac and comprises a deep grass verge and part of a large pasture field that sweeps steeply uphill towards a former railway line. The houses along Somer Lea are mostly semi-detached of similar ages and styles, with a detached house and its garden at the end of the cul-de-sac. There are two protected beech trees near

to the junction of Somer Lea with Tunnel Lane, and there are other mature trees and hedges growing along either side of the lane.

5. Notwithstanding the appellant's description of the site as being infill, I would concur with the findings of the Inspector for a previous appeal on the site (Ref: APP/Q3305/W/20/3251126), in that the scheme would neither be infill nor rounding off of the cul-de-sac. Although the detached dwelling and its garden extends into the field, the property has a clear visual link and relationship with those nearby, as it continues the row of houses at the end of the cul-de-sac.
6. The linear nature of the site could allow the provision of a row of houses as shown on the illustrative drawing, and this would reflect the position of those to the other side of the cul-de-sac. Near to the appeal site the village has an essentially linear nature, being informed by the roads and the river. Fields and paddocks are near to the rear of the buildings and there is a clear and defined transition between the built realm and the countryside. The abrupt immediacy of this relationship is a feature of the area, with the preservation of views of the countryside around the village being a key aim of the Chilcompton Village Design Statement (2015) (DS).
7. As identified by the previous Inspector, the site would be largely contained from the wider landscape by the steep slope that exists beyond the appeal site, and the nearby trees and hedgerows could be retained so as to maintain the distinctive verdant nature of the area. Despite this containment, the scheme would erode the clear transition that exists between the countryside and the built realm. As such there would be harm to the character and appearance of the area, but given the relatively enclosed nature of the site, this harm would be modest.
8. The appellant has drawn my attention to outline permission for an urban extension to a nearby town (application ref: 2021/1480/OTS). A scheme for up to 270 dwellings would be of a significantly different size to that proposed and would extend a large town rather than a village. Given this fundamental and significant difference, this permission does not form a binding precedent for allowing the appeal.
9. The scheme would result in harm to the character and appearance of the area, and the suggested conditions would not overcome this harm. There would be conflict with the requirements of Policies DP1, DP4, and DP7 of the Mendip District Local Plan Strategy and Policies (2014) (LP), and the guidance in the DS. These seek, amongst other things, attractive places, development that contributes positively to the maintenance and enhancement of local identity and distinctiveness, and that which does not significantly degrade the quality of the local landscape, thereby reflecting objectives of the National Planning Policy Framework (the Framework).

#### *Location*

10. Chilcompton has a variety of community facilities, public transport services, and employment opportunities, albeit many of these, including the village shop, are not near the appeal site. It might be that many would be within a 13 – 17 minutes walk away, as described by the appellant, but although the Street is lit, the footways are intermittent, and in places the road is narrow. Pedestrians and cyclists would have to be alert to passing traffic at all times, including taking avoidance measures. As this is a main route through the village walking

or cycling along it to nearby services may not be an attractive option for some, and particularly so given the steep hill that exists to the south.

11. For this appeal the appellant has provided details of the bus services that future occupiers could use, pointing out the proximity of nearby bus stops and that hourly services occur every day apart from Sundays to nearby towns and cities. The frequency of the service would provide an alternative option to using private vehicles, and there is a public footway to one side of the Street that would afford pedestrians with a safe route to the bus stop.
12. Walking or cycling to nearby facilities, services and employment may not be an attractive option for some future residents, but the proximity of the nearby bus stops and the frequency and range of the service, would provide an alternative to private vehicles. Future residents would also bring the benefit of enhancing or maintaining the vitality of the rural community. On balance the scheme would be the sustainable places sought by LP Policy DP7 and the Framework.

### *Drainage*

13. There is a surface water flow route through the site, resulting in medium to low risk flood events. Testing has demonstrated that soakaways would not be viable on the site, and a Surface Water Management Plan has been devised by the appellant to protect the development from upstream surface water flood risk and also to reduce downstream flood risk. Runoff generated by the scheme would go into an on-site attenuation tank with restricted discharge into the River Somer. Parking areas would be permeable paved, and an earth bund or land drain would be constructed at the eastern boundary of the site to intercept runoff from the upstream catchment, directing it to nearby vegetated areas.
14. Despite all matters being reserved, the illustrative layout has been used to provide a preliminary drainage layout. Nevertheless, the particular circumstances of this case are that a number of uncertainties remain, and it is unclear whether these issues could be satisfactorily addressed through reserved matters and conditions. These uncertainties include that the Surface Water Management Plan has been based on illustrative amounts of proposed permeable paving. Who would own and manage the attenuation tank, bunds, and drains, has not been established, and if privately managed, no details of how this is to occur or who will undertake ongoing management and maintenance has been provided. Consent to connect to either the highway drainage network or to that of Wessex Water has not been established, nor has it been demonstrated that existing infrastructure and the River Somer could accommodate the flows arising from the development.
15. Furthermore, the land rises towards the east and it could be that any engineering works, including land levelling or raising, could impact upon water flow. The illustrative layout shows the attenuation tank outside the root protection areas for the protected trees, but these areas are tightly drawn and do not reflect that the trees are growing on a bank near to a road, factors which would impact upon their root spread. In addition, in the nine years since the appellant's arboricultural report (Hillside Trees Ltd 2015) the protected trees would have grown. Whilst the appellant considers conditions could protect the trees, having regard to the linear nature of the site they would pose constraints to any development near to them, and how they would be impacted by the scheme has not been demonstrated with any certainty.

16. Given these concerns, it cannot be assumed that the proposed approach would be adequate to deal with surface water run-off on-site for the lifetime of the development and that it would not cause flooding, including to elsewhere. This is a significant harm that weighs heavily against the scheme. There would be conflict with the requirements of LP Policy DP23 which requires amongst other things, that development will be expected to incorporate appropriate water management measures to reduce surface water run-off and to ensure that it does not increase flood risk elsewhere, objectives which reflect those of the Framework.

### **Other Matters**

17. Local residents have raised a number of concerns, including increased traffic levels in the area, insufficient parking, loss of a public footpath, and impacts upon privacy. However, following my findings on the main issues, I have no need to consider these matters further.

### **Planning Balance**

18. The Council cannot demonstrate a five-year housing land supply, and the Framework requires that in such circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
19. An additional, up to seven, open market dwellings would make a small but important contribution to the Council's housing supply, given the level of significant shortfall of provision in the Council's area (at about 3.76 years). Future occupiers would make a modest contribution to supporting local services and facilities and their viability, and they would have alternative means of transport to the private car. In addition to these modest social, economic, and environmental benefits, there would be modest, albeit time limited, economic benefits arising from the construction of the dwelling and from the New Homes bonus.
20. Weighing against these benefits would be the modest harm to the character and appearance of the area, and the significant harm deriving from the uncertainties surrounding the drainage strategy. These weigh heavily against the proposal, and particularly so with the drainage matters as it remains unresolved as to whether the development would result in an increased flood risk, both within the site and the surrounding area. LP Policies DP1, DP4, DP7, and DP23 are broadly consistent with the Framework, as the Framework also requires development to be sympathetic to local character, to reduce surface water run-off, and to ensure that it does not increase flood risk elsewhere.
21. The appellant has also pointed out that there are no historical or environmental designations upon the site. However, the absence of any such harms is not a benefit of the scheme, but rather a matter of neutral weight.
22. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse impacts in this case amount to cumulative harm which carries substantial weight and this significantly and demonstrably outweighs the modest social, environmental and economic benefits that arise from the scheme, including the weight from the

provision of up to seven additional homes, when assessed against the policies in the Framework as a whole. It follows that the presumption in favour of sustainable development does not apply.

### **Conclusion**

23. For the above reasons the adverse impacts arising from the scheme would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these harms. The scheme would conflict with the development plan when considered as a whole, and there are no other considerations, including the requirements of the Framework, that outweigh this finding.
24. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

*J J Evans*

INSPECTOR



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# Appeal Decision

Site visit made on 28 October 2024

**by J J Evans BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 November 2024**

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**Appeal Ref: APP/E3335/W/24/3339086**

**Blostins Restaurant, 29-33 Waterloo Road, Shepton Mallet BA4 5HH**

- 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 N & L Reed against the decision of Somerset Council.
  - The application reference is 2022/0285/FUL.
  - The development proposed is change of use of part of property from restaurant to residential.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The appeal property is within the catchment flowing into the Somerset Levels and Moors Ramsar. The Conservation of Habitats and Species Regulations (2017) (the Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority.
3. 29-33 Waterloo Road is within the Shepton Mallet Conservation Area. As required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) special regard has been paid to preserving or enhancing the character or appearance of a conservation area.

## Main Issue

4. The main issue in this case is the effect of the scheme upon the integrity of the Somerset Levels and Moors Ramsar.

## Reasons

5. 29-33 Waterloo Road (No 29-33) is within the catchment flowing into the Somerset Levels and Moors Ramsar (the Ramsar). The Ramsar comprises large areas of lowland wet grassland and wetland habitats that support internationally important wildfowl, flora, and invertebrates. Nutrient pollution is a particular problem for freshwater and wetlands habitats as it can cause eutrophication that disrupts and destroys them thereby detrimentally impacting upon the species they support. Unacceptable levels of phosphates are entering the Ramsar and the resultant eutrophication has now put its interest features in an unfavourable condition.



6. Where habitat sites are found to be in an unfavourable condition any further deleterious impact that occurs, regardless of scale, would compromise the ability to restore it to a favourable condition. It is imperative that no additional phosphates enter the catchment. It follows that new residential development should demonstrate that it is nutrient neutral to ensure that no additional nutrients enter the Ramsar.
7. Whilst the appellants question whether a single dwelling would have a significant effect upon the Ramsar, the Council's Nutrient Neutrality in Somerset guidance (2024) (NNS) makes it clear that a variety of new developments, including new residential development, needs to demonstrate beyond a reasonable doubt that it would not give rise to additional phosphates within the hydrological catchment of the Ramsar. Such a requirement reflects those of Natural England and also judgements from the Court of Justice of the European Union (Cases C-293/17 and C-294/17 *Coöperatie Mobilisation for the Environment UA, Vereniging Leefmilieu v College van gedeputeerde staten van Limburg and Stichting Werkgroep Behoud de Peel v College van gedeputeerde staten van Noord-Brabant*).
8. A single dwelling would increase the number of residents within the catchment with consequential impacts upon the integrity of the Ramsar. The NNS reflects guidance from Natural England regarding the assessment means for the change of use of commercial properties to residential use as it is based upon the impact of new residents. Although the appellants consider the approach to lack justification, the key issue is ascertaining the impact of additional residents upon the Ramsar. Given the unfavourable status of the Ramsar and the high bar required to ensure that development does not result in significant effects to its integrity, even a single new dwelling should demonstrate nutrient neutrality.
9. The pertinent issue therefore is to establish whether the change of use would be nutrient neutral, and if not, what mitigation would make it so. This is not a discretionary process, but one required for all new dwellings to ascertain their impact upon the Ramsar and to ensure no further deleterious impact occurs. The restaurant would have resulted in wastewater, and consequently the question to be answered is whether the change of use of the premises to a dwelling would be nutrient neutral.
10. The appellants' phosphorous budget calculator shows that mitigation is required, and the water / wastewater figures also demonstrate an increase in wastewater levels resulting from the scheme, albeit the restaurant figures reflect the impact of Covid and also the reduced opening times of the business before it closed. Nevertheless, it has not been conclusively demonstrated that the change of use would be nutrient neutral. Furthermore, no mitigation has been proposed, a requirement of the NNS and also that which was advised by Royal Haskoning if the water / wastewater figures show a nutrient increase. In such a situation there can be no certainty that the suggested conditions would reduce the adverse effect to a de minimis level that can be secured for the lifetime of the development.
11. Whether the scheme would be nutrient neutral has not been conclusively established, nor has any mitigation been secured. In such circumstances it has not been necessary to examine this matter in greater detail, including

undertaking an Appropriate Assessment to assess the likely significant effects of the proposal on the integrity of the Ramsar, both alone and in combination with other schemes.

12. The National Planning Policy Framework makes it clear that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort compensated, then planning permission should be refused. The effect of the scheme upon the integrity of the Somerset Levels and Moors Ramsar has not been conclusively established, and this would conflict with the Regulations and with objectives of the Framework. There would also be conflict with Policies DP5 and DP8 of the Mendip District Local Plan Strategy and Policies (2014), as these seek, amongst other things, the protection of internationally designated habitats and species, to minimise and where possible reduce all forms of pollution, and not give rise to unacceptable adverse environmental impacts.

### **Other Matters**

13. No 29-33 is within the Shepton Mallet Conservation Area and is part of the long row of mostly historic buildings that are found to the western side of Waterloo Road, which is one of the principal routes into and out of the town. The repeated presence of numerous historic buildings, some of which are high status and others that have a more modest appearance, along with the physical and functional importance of the road within the town, is a distinct element of the character and appearance of the conservation area.
14. The appeal property makes a positive contribution to the area, as its modest two storey form frames the highway and harmonises with the buildings nearby. The external appearance of the building would remain largely unaltered, with the retention of the shopfront providing legible evidence of its former use. Many of the nearby properties already have residential appearances and uses. In such a context the change of use would preserve the character and appearance of the conservation area.
15. The appellants raise several concerns regarding the Council's handling of the application, including incorrect advice, delays, lack of consultation, and the introduction of new evidence at a late stage. However, such concerns fall to be pursued by other means and have no bearing on the consideration of the planning merits of the case.

### **Conclusion**

16. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

*JJ Evans*

INSPECTOR



## Appeal Decision

Site visit made on 6 August 2024

**by R Cahalane BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 22<sup>ND</sup> NOVEMBER 2024**

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### **Appeal Ref: APP/Q3305/W/24/3340886**

### **Land North of Wallbridge Gardens, Wallbridge Gardens, Frome BA11 1RJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by D Kelley (DJ Kelley Homes Ltd) against the decision of Somerset Council.
  - The application Ref is 2023/1036/FUL.
  - The development proposed was described as: "proposed dwelling on land north of Wallbridge Gardens Frome."
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of 1no. dwellinghouse at Land North of Wallbridge Gardens, Wallbridge Gardens, Frome BA11 1RJ in accordance with the terms of the application, Ref 2023/1036/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. The description of development in the decision notice differs to that contained within the application form and which is also included in the banner heading. I have determined the appeal on the basis of the amended description, to avoid duplication of the appeal site address.
3. The appeal submission refers to an adjacent planning permission, granted in March 2023 by Mendip District Council as the Local Planning Authority (LPA) at that time, for a new four-bedroom dwelling<sup>1</sup> (the approved dwelling). I have been provided with the approved plans and I also noted during my site visit that the approved dwelling was under construction. This development therefore forms part of my consideration of this appeal.
4. Although not quoted within the reasons for refusal, the officer report cites an extract from the LPA's Design and Amenity of New Development Supplementary Planning Document (SPD). A copy of this SPD has been provided and it also forms part of my consideration of this appeal.

### **Main Issues**

5. The main issues are:

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<sup>1</sup> LPA Ref: 2022/1723/FUL

- the effect of the proposed development on the character and appearance of the surrounding area;
- whether acceptable living conditions would be provided for future occupiers of the proposed dwelling with regard to private garden space, outlook and privacy; and,
- whether acceptable living conditions would be provided for future occupants of the approved dwelling with regard to private garden space.

## **Reasons**

### *Character and appearance*

6. The appeal site comprises a wedge-shaped parcel of land between a row of garages to the rear of Wallbridge Gardens and a large three storey apartment building facing Great Western Street. It is within the built area of Frome town and within an area containing a variety of dwelling ages, such as the Victorian terraces leading to the 1980's two storey red brick terraced development of Wallbridge Gardens, and the newer Great Western Street development.
7. The proposed dwelling subject of this appeal would be contemporary in appearance, as it would contain monopitch roofs with metal cladding at single storey and two storey level, and large areas of glazing facing its garden area. The proposed elevations indicate red brick, which would reflect the external materials of the nearby terraced dwellings in Wallbridge Gardens. The combination of contemporary forms and traditional brick elevations would also reflect the design of the approved dwelling in which it would sit alongside.
8. Locationally, the proposal could be described as a backland or piecemeal form of development, as the provision of an additional dwelling would subdivide the approved dwelling site and introduce a more intensive use. The proposed dwelling would be noticeably set back from the Great Western Street highway and the adjacent apartments. This relatively secluded siting amongst established development would avoid the proposed scale and massing appearing as a significant structure along Great Western Street.
9. The dwelling would also be visible above the rows of garages at the rear of Wallbridge Gardens, but would sit comfortably beside the approved dwelling and in front of the taller apartment building behind. Although it would be sited in close proximity to the garage block and apartment building to each side, the level of enclosure afforded by surrounding development would not result in a cramped, contrived or awkward appearance when viewed from surrounding public vantage points.
10. I have therefore found that the proposed development would not cause harm to the character and appearance of the surrounding area. In this regard, the proposal complies with the design requirements of Policies DP1 and DP7 of the Mendip District Local Plan Part 1: Strategies and Policies 2014 (MDLPP1). Collectively, these policies require, amongst other things, development to contribute positively to the maintenance and enhancement of local identity and distinctiveness, with an appreciation of the built context of the locality, and to be of a scale, mass, form and layout appropriate to the local context. The proposal also complies with the supporting guidance of the SPD in this respect. The scheme would also meet the aims of Section 12 of the National Planning

Policy Framework (the Framework) and the National Design Guide (NDG), as it would provide a well-designed appearance that respects surrounding context.

*Living conditions – future occupiers of the proposed dwelling*

11. The garden area for the proposed dwelling is narrow and dominated on one side by an adjacent back wall of garages on higher ground level. The overall depth of the garden, along with its site orientation and positioning away from other built form, would nonetheless allow for sufficient sunlight throughout the day. This area is also enclosed by fencing along Great Western Street which restricts views at street level, and I am satisfied that the precise details of all boundary treatments for the proposal could be secured by means of a suitably worded planning condition. The garden would also be sited at sufficient distance away from neighbouring windows to avoid adverse impact on privacy. Overall, the garden would be of sufficient size and layout for the modestly sized two-bedroomed dwelling which it would serve.
12. The proposed elevation facing the garden would contain windows serving a ground floor living area and first floor main bedroom. It would not face the apartment building or garages and would instead face the deep rear garden and mature shrubbery beyond. The proposed second bedroom would face towards Wallbridge Gardens but would sit sufficiently above the row of garages, and away from neighbouring rear gardens and elevations, such that adequate outlook and privacy would be provided.
13. The ground floor window serving the kitchen and dining area would face towards the approved dwelling. However, the intervening boundary would provide adequate privacy whilst also allowing for adequate outlook when considering the overall proposed layout of habitable rooms. Whilst the approved dwelling contains first floor windows facing the proposed kitchen window, they are small and do not serve habitable rooms.
14. The appeal proposal would therefore provide acceptable living conditions for its future occupiers with regard to private garden space, outlook and privacy. In this regard, the proposal complies with Policy DP7 of the MDLPP1 which requires, amongst other things, development to provide a satisfactory environment for current and future occupants. The proposal also complies with the supporting guidance of the SPD and the NDG in this respect, as the approved dwelling would remain fit for purpose and durable to meet the needs of its future occupiers.

*Living conditions – future occupiers of the approved dwelling*

15. At the time of my visit, the garden spaces for the approved dwelling were laid to turf, including an area adjacent to its driveway and parking. This area is well separated from the driveway by closeboard boundary screening, and is also significantly lower in ground level than this access and the row of garages along its front. This provides a sufficient level of privacy for this area to function effectively as a private garden, despite its location beside the driveway and in front of the approved dwelling. The layout of this dwelling forms an inverted 'L' shape around this front garden and includes two large sets of patio doors to allow for convenient access. Future occupiers would also be served by another smaller enclosed garden area towards the appeal proposal.

16. Considering these garden areas in combination, and alongside the current proposed dwelling, sufficient private garden space would be provided for future occupiers of the approved four-bedroom dwelling, including families. Future occupiers would be afforded with sufficient privacy, sunlight and outlook.
17. The overall scheme would therefore provide acceptable living conditions for future occupants of the approved dwelling with regard to private garden space. In this regard, the proposal complies with Policy DP7 of the MDLPP1 which requires, amongst other things, development to protect the amenity of users of neighbouring buildings and provide a satisfactory environment for current and future occupants. The proposal also complies with the supporting guidance of the SPD and the NDG in this respect, as it would be fit for purpose and durable to meet the needs of its future occupiers.

### **Other Matters**

18. The layout of surrounding roads and accesses would naturally limit vehicle speeds to and from the appeal site, and the level of additional movements in the area would not be significant. I am also mindful that the County Highway Authority raised no objection in consultation in respect of highway safety or capacity. The proposed provision of parking space is adequate for the scale of the proposed dwelling and its location near to facilities and services. The precise ownership or legal rights of access routes or parking areas are not matters that can be considered under this appeal.
19. The proposed plans include solar panels on the roof and an interested party has commented that air source heat pumps must also be included. However, no planning policy requirement mandating their inclusion is before me. Alternative uses of the site as an urban park or wildlife area are also suggested, but the site already has permission as part of the private gardens of the approved dwelling. The siting of the proposed dwelling would avoid an adverse degree of overshadowing to neighbouring gardens, and the dwelling would be provided with sufficient internal floorspace for future occupiers. Whilst it would be sited near to an existing garage block, there would be sufficient space provided for access and maintenance.

### **Conditions**

20. I have considered the LPA's suggested conditions against the tests in the Framework and Planning Practice Guidance, and have amended their wording, where necessary. I consider that conditions specifying time limits for the development (condition 1) and the approved plans (condition 2) are necessary in the interests of planning certainty. Condition 3 is necessary in the interests of the character and appearance of the surrounding area.
21. During my site visit, I noted a set of access gates to the appeal site facing Great Western Road, which appeared temporary in nature, and access would also be possible via Wallbridge Gardens. Condition 4 is necessary to clarify, agree and control the proposed construction access arrangements to the site prior to commencement of development, along with measures to control the impacts on surrounding residents and highway users. Condition 5 is necessary to ensure that sufficient off-street parking provision is provided prior to occupation. The suggested hours of construction (condition 6) are necessary to protect living conditions of residents.

22. The proposed garden area would not be readily visible from surrounding public vantage points. However, the approved dwelling plans include new planting details within the current appeal site, and the appellant's statement of case also refers to the potential of increased planting. There are also no details before me regarding the proposed boundary treatments, some of which would be visible along Great Western Street, or the precise layout of surfacing materials. It is therefore necessary and reasonable to impose a pre-occupation condition requiring submission of both hard and soft landscape details for consideration and approval by the LPA (condition 7), in the interests of the character of the area and the living conditions of future occupiers. I have deleted the suggested reference to "any retained planting" as the appeal site contains no existing hedging or trees, and also deleted the word "roadways" as this does not form part of the proposed development. I have made reference to "the development hereby permitted" to conditions 3, 5 and 7, in the interests of clarity and consistency.
23. Given the proximity of the appeal dwelling to neighbouring boundaries, and having regard to the Planning Practice Guidance (PPG), it is necessary and reasonable to remove permitted development rights (condition 8) for further extensions and external alterations to the dwelling. In line with the PPG, I have reworded this condition to make precise reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear which rights have been withdrawn. I have removed the suggested reference to "or other buildings hereby approved", as the proposal only relates to one new building. Owing to the particular layout of the overall scheme, it is unlikely that any future provision of incidental outbuildings within the garden would significantly impact its overall size.

### **Conclusion**

24. The proposal is in accordance with the development plan as a whole and the Framework, and the material considerations do not indicate that a decision should be made other than in accordance with it. The appeal should therefore be allowed.

*R Cahalane*

INSPECTOR

## Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
  
1175/1 Existing and Proposed Block Plans and Elevations; and 1175/3 Proposed Site Plan received on 08th June 2023  
1175/2 Proposed Floor Plans and Elevations received on 07th August 2023.
- 3) The development hereby permitted shall be carried out using external facing and roofing materials as specified on the application form and plans.
- 4) No development shall take place until a Construction Management Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period and shall provide for:
  - (a) Details and location of the proposed construction access to the site;
  - (b) Details and location of parking for site operatives and visitor vehicles (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
  - (c) Details and location where plant and materials used in constructing the development will be stored;
  - (d) Details of any wheel washing facilities;
  - (e) Details of measures that will be applied to control the emission of noise, vibration and dust;
  - (f) Details of any highway licenses and traffic orders that may be required (such as for licences for any structures / materials on the highway or pavement);
  - (g) Details of the programming and timing of works, including an emergency contact number.
- 5) No occupation of the development hereby permitted shall commence until the parking space has been provided on-site in accordance with Drawing Number 1175/1. The parking spaces shall be retained permanently thereafter.
- 6) Noise emissions from the site during the development, i.e. the demolition, clearance and redevelopment of the site, shall not occur outside of the following hours:  
  
8am to 6pm Mondays to Fridays; and  
  
8am to 1pm on Saturdays.  
  
All other times, including Sundays, Bank and Public Holidays there shall be no such noise generating activities.
- 7) No occupation of the development hereby permitted shall commence until a hard and soft landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:
  - (a) size, species and positions for new trees and plants;



- (b) boundary treatments;
  - (c) surfacing materials (including drives, patios and paths); and,
  - (d) a detailed programme of implementation.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, C and D of Part 1 of Schedule 2 to the Order shall be undertaken.

**\*\*\*End of Schedule\*\*\***



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## Appeal Decision

Site visit made on 13 November 2024

by **E Pickernell BSc MSC MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

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**Appeal Ref: APP/E3335/W/24/3344686**

**The Barn, Newman Street, Doultong, Shepton Mallet BA4 4JZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Mark Lambert against the decision of Somerset Council.
  - The application Ref is 2024/0253/PAA.
  - The development proposed is Class Q (a) and (b) change of use of an agricultural building to a dwelling house including building operations.
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### Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class Q (a) and (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for Class Q (a) and (b) change of use of an agricultural building to a dwelling house including building operations at The Barn, Newman Street, Doultong, Shepton Mallet BA4 4JZ in accordance with the application 2024/0253/PAA and the details submitted with it including drawing numbers LAM-01, LAM-04 and LAM-05. The approval is subject to the condition that the development must be completed within a period of 3 years from the date of this decision in accordance with Paragraph Q.2(3) of the GPDO and the provisions specified in paragraph W.

### Preliminary Matters

2. The Town and Country Planning (General Permitted Development) England (Amendment) Order 2024 came into force on 21 May 2024. Transitional arrangements apply to applications submitted under the previous iteration of the Order. Therefore, the changes do not affect my consideration of this appeal. Consequently, I have not invited further comments from the parties. I have referred to paragraph and section references from the GPDO prior to these amendments.
3. The appellant has highlighted seemingly contradictory statements in the officer report. However, it is clear from an overall reading of the report and the decision notice that the Council has refused to grant approval and the reasons for this are sufficiently clear.

### Main Issue:

4. The main issue is whether the proposed development would constitute permitted development in respect of Class Q of Part 3 of Schedule 2 of the

GPDO with particular reference to the extent of the proposed building operations.

## Reasons

5. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order and any building operations reasonably necessary to convert the building. Class Q.1(i)(i) (aa) allows for the installation or replacement of windows, doors, roofs or exterior walls to the extent reasonably necessary for the building to function as a dwellinghouse.
6. Planning Practice Guidance (PPG) explains that the right assumes that the agricultural building is capable of functioning as a dwelling and that it is not the intention of the permitted development right to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building. It is only where the existing building is already suitable for conversion that the building would be considered to have the permitted development right.
7. My attention has been drawn to the Hibbitt<sup>1</sup> caselaw which considered whether the works required to bring about the change of use amounted to a re-build or 'fresh' build as opposed to a conversion. Planning judgement should be made on a fact and degree basis.
8. The appeal building comprises external metal sheeting supported by a steel frame. A structural appraisal carried out by chartered civil and structural engineers<sup>2</sup> concludes that the barn could be converted without the need to install any major structural modifications, improvements or upgrading. The Council has not produced any compelling evidence to the contrary.
9. The existing frame and cladding would be retained, and a new non-structural exterior wall would be inserted on the northern elevation containing a number of openings which would serve the main living and sleeping areas of the dwelling. The proposed alterations would be reasonably necessary in order to make the building weather-tight and to provide adequate light and ventilation for future occupiers.
10. PPG explains that 'Internal works are not generally development. For the building to function as a dwelling it may be appropriate to undertake internal structural works, including to allow for a floor, the insertion of a mezzanine or upper floors within the overall residential floor space permitted, or internal walls, which are not prohibited by Class Q.' Consequently, the internal works proposed including the construction of non-structural stud walling built off a concrete slab are not prohibited by Class Q.
11. The proposed works do not go beyond the scope of permitted development under Class Q and do not amount to a fresh build, given that the majority of the existing structure is to be retained and no new structural elements are proposed. No operations involving excavating, installing or strengthening the foundations, which are not permitted by Class Q, are proposed.

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<sup>1</sup> Hibbitt v SSCLG & Rushcliffe BC [2016] EWHC 2853 (Admin)

<sup>2</sup> Report by Vale Design Partnership LLP dated 16 July 2023

12. Based on the evidence provided, I am satisfied that the proposal would constitute permitted development in respect of Class Q of Part 3 of Schedule 2 of the GPDO with particular reference to the extent of the proposed building operations.

### **Other Matters**

13. The conditions set out in paragraph Q2(1) (a) to (g) relate to certain details of the proposed development, including transport and highways, noise, contamination, flooding, location or siting, design or external appearance and the provision of adequate natural light in all habitable rooms. The Council raises no concerns in relation to these matters.
14. Based on the information before me and my observations on site, I have no reason to take a different view to the Council in respect of the above matters. Therefore, the proposal would comply with these other matters to be considered under Class Q.

### **Conditions**

15. Any prior approval granted under Schedule 2, Part 3, Class Q of the GPDO is subject to the condition under Q.2 (3) which specifies that the development shall be completed within a period of 3 years, as well as the provisions of paragraph W., including paragraph W (12) which requires development to be carried out in accordance with the details submitted.
16. The Council has not suggested any conditions which it considers should be attached to any permission and I do not consider any further conditions to be necessary.

### **Conclusion**

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

*E Pickernell*

INSPECTOR