



APPEAL DECISIONS (for information)

PLANNING COMMITTEE - WEST

TUESDAY 20 JUNE 2023

Application No: 31/21/0002/T

Address: 40 NEWLANDS ROAD, RUISHTON, TAUNTON, TA3 5JZ

Description: Application to fell one Oak tree included in Taunton Deane Borough (Ruishton No.1) Tree Preservation Order 2008 at 40 Newlands Road, Ruishton (TD1051)

Application Decision: Committee

Appeal Decision: Dismissed

Appeal Decision

Site visit made on 19 April 2023 by **Nick Davies BSc(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/TPO/W3330/9037 40 Newlands Road, Ruishton, Taunton TA3 5JZ

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Ruth James against the decision of Somerset West and Taunton Council.
- The application Ref: 31/21/0022/T, dated 3 December 2021, was refused by notice dated 8 February 2022.
- The work proposed is T1 Oak - Fell.
- The relevant Tree Preservation Order (TPO) is the Somerset West and Taunton (Ruishton No.1) Tree Preservation Order 2022 (SWT54), which was confirmed on 15 September 2022.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision to refuse consent was made by Somerset West and Taunton Council, which ceased to exist on 1 April 2023, following a merger with Mendip, Sedgemoor, and South Somerset District Councils, and Somerset County Council, to form the new Somerset Council.
3. The relevant TPO at the time the Council made its decision was the Taunton Deane Borough (Ruishton No. 1) Tree Preservation Order (2008) (PD22/870/TD1051). A new Order was made and confirmed during the appeal, and as this is the one that applies at the time of my decision, I have included it in the banner heading.

Main Issues

4. The main issues are the effect of the proposed felling of the tree on the character and appearance of the area; and whether sufficient justification has been demonstrated for the proposed felling.

Reasons

5. The appeal tree lies between the rear garden boundary fences of 34-40 Newlands Road and 17-20 Coronation Close. It is a large, mature oak tree, growing in an area that is predominantly residential, although there is a primary school on the opposite side of Newlands Road. The proposal is to fell the tree to ground level.
6. The site lies in a large area of houses, which are largely terraced or semidetached. They are set back from the road behind partially enclosed front gardens that are mainly given over to car-parking. Consequently, there is little in the way of mature planting in the front gardens. There are some large trees at the entrance to the school opposite, and along its roadside boundary. However, this is not an area that benefits from a significant degree of mature tree cover, so it is the rather unremarkable buildings that are visually predominant.
7. Although the tree is set behind houses on all four sides, its impressive scale means that it is widely visible from public viewpoints. I saw that it was clearly visible from the bend in the road at Newlands Grove, approximately 230 metres to the north. It is seen in the gaps between houses at various points around Newlands Road and Crescent, including between 10d and 11 Newlands Crescent, where its large, symmetrical rounded canopy is a notable feature in the street scene, softening the form of the buildings in front. From the stretch of Newlands Road to the east, it provides a green backdrop above the rooftops of the terraced houses. It is also prominent from the footpath running along the edge of the field to the south, where its entire crown can be appreciated.
8. The tree is also an important feature from the junction of Bushy Cross Lane and Coronation Close to the west. From here, it is seen almost in its entirety between the houses at the end of the cul de sac. It makes a striking focal point that terminates the views down this long straight road. It is, therefore, visible from a wide area, and from all directions, and it makes a significant contribution to the visual amenity of the locality. Its removal would result in the loss of a notable feature in the street scene, along with its softening impact on the built environment, and its role as a visual focal point.
9. The appellant has indicated a willingness to plant several smaller trees along the boundary. However, these would take many years to reach maturity, and until then would be largely concealed behind the frontage buildings, so would not make the same contribution to the visual amenity of the wider area as the existing tree. In a locality which already has relatively sparse tree cover, the felling of the oak would, therefore, result in substantial harm to the character and appearance of the area. Thus, any reasons given to justify its removal need to be compelling. It is to those reasons which I now turn.
10. The tree has recently shed a large limb, which was still loosely attached to the trunk at the time of my visit. As the tree overhangs the rear gardens of several houses, this has, understandably led to concerns regarding its stability and the potential for similar occurrences in the future. However, following the loss of the limb, an inspection, including Resistograph measurements, revealed no significant decay in the wound, or at the base of the tree. A potential crack was found in a low limb that overhung the garden of 40 Newlands Road, and I saw that this branch has been shortened to remove the risk. Although I have not been provided with a copy of the report, the evidence before me indicates that the failure of the limb was likely to be a result of "summer branch drop", rather than any inherent structural instability or weakness in the tree.

11. There is conflicting evidence regarding the consultant's advice at the time of inspection. The appellant contends that the advice was that the tree is outgrowing its structural integrity. However, the Council states it was advised that removal of the tree was unnecessary, and that careful crown reduction

would be appropriate to manage the risk. As, in both cases, the advice was only given verbally and not committed in writing, I am unable to give it any weight. Consequently, there is no expert advice before me to indicate that there is any foreseeable risk of future failure of the tree, or the shedding of any more branches. Furthermore, I saw no obvious defects at the time of my visit, and little signs of any dead wood in the crown, which appears to be in good health and vigour.

12. I am mindful of the appellant's suggestion that the only way to completely remove the risk would be to fell the tree. However, such drastic action would not be justified in the absence of any evidence of the likelihood of failure. The same argument could be made for any mature tree in a residential environment, resulting in a gradual erosion of tree cover that would be harmful to visual amenity. The evidence indicates that the Council would be sympathetic to the reduction of the crown by 3-4 metres to reduce the sail area of the tree and the end weight of the branches. Such lesser works would result in substantially less harm to the character and appearance of the area. Consequently, there appears to be a reasonable alternative to felling the tree that would reduce any risk that it poses.

13. It is contended that the tree is disproportionate to its residential setting and that it impacts on the reasonable enjoyment of the surrounding properties. However, while it is undoubtedly a large specimen, the houses on either side have long rear gardens. Consequently, the canopy of the tree is a significant distance away from any of the dwellings, so it does not result in an unacceptable loss of light or outlook from any windows. Furthermore, all of the surrounding gardens have large areas that are outside the canopy spread of the tree, where normal outdoor activities would not be compromised by its presence. I saw that all of the adjacent gardens had grass and plant growth right up to their rear boundary fences, indicating that, even under the canopy, there is not continual dense shade. Overall, I do not find that the reasonable enjoyment of neighbouring properties is affected by the tree to such a degree that its felling would be justified.

14. It is likely that the surrounding houses pre-date the original TPO. However, it would appear that the layout was a response to the presence of the tree and has enabled its retention to date. The Council's evidence that, under current guidance¹, the houses were constructed far enough away from the trees has not been challenged. Consequently, and in view of my findings regarding the impact of the tree on the reasonable enjoyment of the surrounding properties, I conclude that the houses were not built too close to the tree, and sufficient space was provided to allow for the successful retention of the tree in the longterm.

15. The tree is growing in an area outside the enclosed rear gardens of the adjacent houses, on a strip of land that allows rear access to Nos 36-40 Newlands Road. The relative locations of the tree and the boundary fences means that there is less than a metre access width to the rear gardens of Nos 36 and 38. Bearing in mind the slow rate at which the girth of a mature tree increases, the narrowness of the access will not have altered appreciably in recent years. Indeed, the location of the tree was known when these boundary features were installed in the relatively recent past. The limitation on access width is not therefore a new phenomenon, and

¹ BS5837:2012 Trees in relation to design, demolition and construction - Recommendations

it could readily be remedied by a minor realignment of the rear boundary fences. Consequently, the currently limited width of the rear access is not an issue that would justify the felling of the tree.

16. With any application to fell a protected tree, a balancing exercise needs to be undertaken. The essential need for the works applied for must be weighed against the resultant loss to the amenity of the area. In this case, the felling of the tree would result in substantial harm to the character and appearance of the area, and, in my judgement, insufficient justification has been demonstrated for its proposed felling.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

Nick Davies INSPECTOR

Application No: 24/21/0059

Address: THE NEW HOUSE, NEWPORT MILLS FARM, NEWPORT MILLS LANE, NORTH CURRY, TAUNTON, TA3 6DJ

Description: Removal of Condition No. 03 (agricultural occupancy) of application 24/87/0010 at New House, Mill Farm, Wrantage

Application Decision: Delegated Decision

Appeal Decision: Dismissed



Appeal Decision

Site visit made on 23 May 2023 by **Jonathan Edwards BSc(Hons) DipTP**

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/W3330/W/22/3296806 New House, Newport Mills Farm, Newport, Wrantage, Taunton, Somerset TA3 6DJ

- 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 Sarah Jones against the decision of Somerset West and Taunton Council.
- The application Ref 24/21/0059, dated 2 December 2021, was refused by notice dated 28 January 2022.
- The application sought planning permission for erection of agricultural worker's chalet bungalow without complying with a condition attached to planning permission Ref 24/87/010, stated on the application form as being dated 2 July 1987.
- The condition in dispute is No 03 which states that: The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person.
- The reason given for the condition is: The site is in an area where the Local Planning Authority's policy is to restrict new residential development to that required to meet the needs of agriculture or forestry.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application leading to this appeal was submitted by Mr Thomas Watson. He has since died. Evidence has been submitted that indicates the legal authority to proceed with the appeal has been passed to Sarah Jones. I have used this name in the banner heading.
3. The appellant has submitted a grounds of appeal document dated April 2022 (hereafter referred to as the appellant's original statement). An updated version of this document dated February 2023 as well as a marketing report have also

been submitted. These have since been publicised and the Council and interested parties have had an opportunity to provide comments. I am satisfied no injustice would be caused by having regard to the latest documents.

4. I have been provided with a copy of a certificate of lawful use or development issued by the Council under reference number 24/15/0017/LE (hereafter referred to as the certificate of lawfulness). This is a material factor in my assessment.

Background and Main Issue

5. The disputed condition limits the occupancy of New House. In effect, this appeal seeks to remove the condition to allow unrestricted occupancy. The main issues are whether the condition is necessary, reasonable and enforceable in light of the policies of the Taunton Deane Borough Council Core Strategy 2012 (CS) and the Taunton Deane Site Allocations and Development Management Plan 2016 (SADMP) as well as the certificate of lawfulness.

Reasons

6. The appeal property is a 3 bedroom dwelling with outbuildings in its garden. It lies in a cluster of development including agricultural buildings as well as a small number of dwellings. Fields lie in the surrounding area and so there is a strong agricultural feel to the locality.
7. CS Policy SP1 looks to direct development to the most accessible locations. Proposals outside of identified settlements are to be treated as being in the open countryside. Under CS policy CP1, development should be located to reduce the need to travel. New House is not in a settlement defined in the CS and it is away from facilities to serve the day to day needs of its occupants. As such, it is in a location that normally would be deemed unsuitable for housing.
8. The original planning permission was granted on the basis the dwelling would accommodate an agricultural worker employed in the locality. Under the terms of SADMP policy H1a, housing is permissible to support rural activities subject to various criteria. This policy states that occupancy conditions will be applied to new dwellings. The disputed condition serves a purpose in ensuring that New House complies with this stipulation.
9. SADMP policy H1a sets out the circumstances when the removal of occupancy conditions will be permitted. There is no agricultural land associated with New House and so the dwelling is not needed to accommodate workers employed at the appeal property. Even so, the disputed condition refers to a person working in the locality, not just at the appeal site. Also, policy H1a requires there to be no demand for residences to accommodate agricultural workers from the local area before an occupancy condition is removed. Evidence is required that shows the dwelling cannot be sold or let at a price which reflects the occupancy restriction.
10. A marketing campaign for New House started in March 2022 with a £450,000 guide sale price. The updated statement claims that this price reflects the

agricultural tie and so, in line with typical devaluation effects associated with occupancy conditions, it is 30% lower than the full market value. However, this contradicts the comment at paragraph 7 of the appellant's original statement that the £450,000 sale price reflects the full market value of the dwelling. Moreover, the appellant's evidence fails to explain how the guide price has been established and how it compares with the sale price of similar properties in the area. The Council claims there are other nearby dwellings for sale and of a similar size to New House with a lower asking price, despite not being subject to an agricultural tie. There is no evidence on local property values and sale prices that contradicts this claim.

11. In December 2022 the guide price for New House was reduced to £425,000. I am advised that there have been several enquiries but these have not resulted in any firm offers for the property. Nonetheless, there is no convincing evidence that demonstrates £425,000 is an appropriate guide price, particularly when considering the devaluation effect of the agricultural occupancy condition. Also, there is no evidence to indicate the property has been made available for let with rent levels that reflect the occupancy restriction. As such, the provisions of SADMP policy H1a on applications to remove occupancy conditions have not been complied with.
12. Furthermore, the appeal property lies in an area where I would envisage people are employed in agriculture. Therefore, it is reasonable to expect a local demand for agricultural workers dwellings, especially in the absence of an appropriate marketing campaign that shows otherwise. Accordingly, the disputed condition is necessary to ensure the appeal property continues to meet a local need for agricultural workers accommodation.
13. The certificate of lawfulness determines that a breach of the disputed condition was lawful on 17 June 2015. However, this determination only relates to the situation on the specified date. Since then, New House has been left empty from the time the former occupier died until the current day. The appellant accepts that this period of vacancy may constitute a cessation of the breach of the disputed condition. If so, any new breach of the condition would now be unlawful and so it is unlikely that non-compliant occupation would occur.
14. In light of the particular circumstances of this case and the appellant's comments, any fallback position in terms of occupation of New House that relies on the presence of the certificate of lawfulness attracts limited weight in my considerations. As such, I consider the disputed condition is enforceable, despite the certificate of lawfulness. The specific circumstances with this current appeal are not replicated in any of the other appeal decisions referred to by the appellant. Therefore, they fail to influence my overall conclusion.

Conclusion

15. The disputed condition is necessary as New House is in a location that is normally inappropriate for residences and to ensure it accords with development plan policies on rural workers dwellings. Also, insufficient evidence has been provided to show the dwelling is no longer needed to serve the needs of

agricultural or forestry workers employed in the locality. In these regards, I conclude the development without the disputed condition would be contrary to CS policies SP1 and CP1 and SADMP policy H1a. The certificate of lawfulness does not result in the disputed condition being unenforceable. The condition is therefore necessary, reasonable and enforceable. As such, I conclude the appeal should fail.

Jonathan Edwards

INSPECTOR

Application No: 12/22/0001

Address: THE NEW HOUSE, NEWPORT MILLS FARM, NEWPORT MILLS LANE, NORTH CURRY, TAUNTON, TA3 6DJ

Description: Removal of Condition No. 03 (agricultural occupancy) of application 24/87/0010 at New House, Mill Farm, Wrantage

Application Decision: Delegated Decision

Appeal Decision: Dismissed



Appeal Decision

Site visit made on 23 May 2023 by **Jonathan Edwards BSc(Hons) DipTP**

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2023

Appeal Ref: APP/W3330/W/22/3296806 New House, Newport Mills Farm, Newport, Wrantage, Taunton, Somerset TA3 6DJ

- 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 Sarah Jones against the decision of Somerset West and Taunton Council.
- The application Ref 24/21/0059, dated 2 December 2021, was refused by notice dated 28 January 2022.
- The application sought planning permission for erection of agricultural worker's chalet bungalow without complying with a condition attached to planning permission Ref 24/87/010, stated on the application form as being dated 2 July 1987.
- The condition in dispute is No 03 which states that: The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 290(1) of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her or a widow or widower of such a person.
- The reason given for the condition is: The site is in an area where the Local Planning Authority's policy is to restrict new residential development to that required to meet the needs of agriculture or forestry.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application leading to this appeal was submitted by Mr Thomas Watson. He has since died. Evidence has been submitted that indicates the legal authority to proceed with the appeal has been passed to Sarah Jones. I have used this name in the banner heading.
3. The appellant has submitted a grounds of appeal document dated April 2022 (hereafter referred to as the appellant's original statement). An updated version of this document dated February 2023 as well as a marketing report have also been submitted. These have since been publicised and the Council and

interested parties have had an opportunity to provide comments. I am satisfied no injustice would be caused by having regard to the latest documents.

4. I have been provided with a copy of a certificate of lawful use or development issued by the Council under reference number 24/15/0017/LE (hereafter referred to as the certificate of lawfulness). This is a material factor in my assessment.

Background and Main Issue

5. The disputed condition limits the occupancy of New House. In effect, this appeal seeks to remove the condition to allow unrestricted occupancy. The main issues are whether the condition is necessary, reasonable and enforceable in light of the policies of the Taunton Deane Borough Council Core Strategy 2012 (CS) and the Taunton Deane Site Allocations and Development Management Plan 2016 (SADMP) as well as the certificate of lawfulness.

Reasons

6. The appeal property is a 3 bedroom dwelling with outbuildings in its garden. It lies in a cluster of development including agricultural buildings as well as a small number of dwellings. Fields lie in the surrounding area and so there is a strong agricultural feel to the locality.
7. CS Policy SP1 looks to direct development to the most accessible locations. Proposals outside of identified settlements are to be treated as being in the open countryside. Under CS policy CP1, development should be located to reduce the need to travel. New House is not in a settlement defined in the CS and it is away from facilities to serve the day to day needs of its occupants. As such, it is in a location that normally would be deemed unsuitable for housing.
8. The original planning permission was granted on the basis the dwelling would accommodate an agricultural worker employed in the locality. Under the terms of SADMP policy H1a, housing is permissible to support rural activities subject to various criteria. This policy states that occupancy conditions will be applied to new dwellings. The disputed condition serves a purpose in ensuring that New House complies with this stipulation.
9. SADMP policy H1a sets out the circumstances when the removal of occupancy conditions will be permitted. There is no agricultural land associated with New House and so the dwelling is not needed to accommodate workers employed at the appeal property. Even so, the disputed condition refers to a person working in the locality, not just at the appeal site. Also, policy H1a requires there to be no demand for residences to accommodate agricultural workers from the local area before an occupancy condition is removed. Evidence is required that shows the dwelling cannot be sold or let at a price which reflects the occupancy restriction.
10. A marketing campaign for New House started in March 2022 with a £450,000 guide sale price. The updated statement claims that this price reflects the agricultural tie and so, in line with typical devaluation effects associated with

occupancy conditions, it is 30% lower than the full market value. However, this contradicts the comment at paragraph 7 of the appellant's original statement that the £450,000 sale price reflects the full market value of the dwelling. Moreover, the appellant's evidence fails to explain how the guide price has been established and how it compares with the sale price of similar properties in the area. The Council claims there are other nearby dwellings for sale and of a similar size to New House with a lower asking price, despite not being subject to an agricultural tie. There is no evidence on local property values and sale prices that contradicts this claim.

11. In December 2022 the guide price for New House was reduced to £425,000. I am advised that there have been several enquiries but these have not resulted in any firm offers for the property. Nonetheless, there is no convincing evidence that demonstrates £425,000 is an appropriate guide price, particularly when considering the devaluation effect of the agricultural occupancy condition. Also, there is no evidence to indicate the property has been made available for let with rent levels that reflect the occupancy restriction. As such, the provisions of SADMP policy H1a on applications to remove occupancy conditions have not been complied with.
12. Furthermore, the appeal property lies in an area where I would envisage people are employed in agriculture. Therefore, it is reasonable to expect a local demand for agricultural workers dwellings, especially in the absence of an appropriate marketing campaign that shows otherwise. Accordingly, the disputed condition is necessary to ensure the appeal property continues to meet a local need for agricultural workers accommodation.
13. The certificate of lawfulness determines that a breach of the disputed condition was lawful on 17 June 2015. However, this determination only relates to the situation on the specified date. Since then, New House has been left empty from the time the former occupier died until the current day. The appellant accepts that this period of vacancy may constitute a cessation of the breach of the disputed condition. If so, any new breach of the condition would now be unlawful and so it is unlikely that non-compliant occupation would occur.
14. In light of the particular circumstances of this case and the appellant's comments, any fallback position in terms of occupation of New House that relies on the presence of the certificate of lawfulness attracts limited weight in my considerations. As such, I consider the disputed condition is enforceable, despite the certificate of lawfulness. The specific circumstances with this current appeal are not replicated in any of the other appeal decisions referred to by the appellant. Therefore, they fail to influence my overall conclusion.

Conclusion

15. The disputed condition is necessary as New House is in a location that is normally inappropriate for residences and to ensure it accords with development plan policies on rural workers dwellings. Also, insufficient evidence has been provided to show the dwelling is no longer needed to serve the needs of agricultural or forestry workers employed in the locality. In these regards, I

conclude the development without the disputed condition would be contrary to CS policies SP1 and CP1 and SADMP policy H1a. The certificate of lawfulness does not result in the disputed condition being unenforceable. The condition is therefore necessary, reasonable and enforceable. As such, I conclude the appeal should fail.

Jonathan Edwards

INSPECTOR

Application No: 45/22/0005

Address: LOWER TOOLLANDS, NEW ROAD, WEST BAGBOROUGH,
TAUNTON, TA4 3EP

Description: Variation of Condition No. 06 (agricultural occupancy), to
widen the scope of occupation, of application 45/93/0006
at Lower Toollands, West Bagborough

Application Decision: Delegated Decision

Appeal Decision: Dismissed



Appeal Decision

Site visit made on 12 April 2023 by **David Nicholson** RIBA IHBC

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

Decision date: 2 May 2023

Appeal Ref: APP/W3330/W/22/3308523 Lower Toollands, New Road, West Bagborough, Taunton TA4 3EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (T&CPA) against a refusal to grant planning permission under section 73 of the T&CPA for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs Ayre against the decision of Somerset West and Taunton Council¹.
- The application Ref. 45/22/0005, dated 6 April 2022, was refused by notice dated 27 June 2022.
- The application sought planning permission for: *Erection of Agricultural Workers [sic] Dwelling* without complying with a condition attached to planning permission Ref 45/93/0006, dated 4 November 1993.
- The condition in dispute is No. 6 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 336(1) of the Town and Country Planning Act, 1990, or forestry or a dependant of such a person residing with him or her or a widow or widower of such a person.*
- The reason given for the condition is that: *The site is in an area where the Local Planning Authority's policy is to restrict new residential development to that required to meet the needs of agriculture or forestry.*

Decision

1. The appeal is dismissed.

Procedural matters

2. The Appellants consider that the agricultural occupancy condition has outlived its usefulness as it currently stands and, while they would prefer the condition to be removed entirely, consider it appropriate to seek a variation to widen the scope of occupation, to ensure future occupiers can remain compliant.
3. The variation seeks to widen the scope of occupation by adding, after *forestry*, the words: *... or involved in the tourism business operated on the holding,*
The application was refused for 3 reasons:
 - a. it would introduce unnecessary wording;

- b. insufficient information to justify the proposed amendment;
 - c. no evidence of appropriate marketing as an Occupancy Tied property;
- and that all of these would be contrary to Policy H1a of the Development Plan.

¹ On 1 April 2023, the Council was abolished and replaced by SomersetCouncil

Main Issues

4. I consider that the main issues are whether:
- a. the condition is justified²;
 - b. the evidence justifies a broader exemption to include tourism in the definition of a rural worker;
 - c. the property has been appropriately marketed with the occupancy restriction.

In each case I have considered removing the condition or substituting it with the revised wording.

Reasons

5. The appeal site comprises the house and outbuildings. It is surrounded by land in the Appellants' ownership which is in use as a holiday park with static caravans, lodges and pitches. This use has been permitted in a series of approvals since 2014.
6. The original permission was granted, as an exception, to support a horticultural use. Condition 6 was added to secure the occupancy in line with the exceptional permission. I am told that there has been no agricultural income from the holding for over 10 years. I am not aware that the Council has taken any enforcement action or that the Appellant has applied for a Lawful Development Certificate, and these matters are not before me.
7. Policy for *New permanent housing for rural workers* is detailed in Local Plan Policy H1a. This provides no detail on the amendment of existing conditions, but it does comment on the removal of occupancy conditions and states:

Applications to remove these or other related conditions will not be permitted unless:

- i. The dwelling is no longer needed on that unit for the purposes of agriculture or rural based enterprises;*
- ii. There is no current demand for dwellings for agriculture or other rural based industries in the locality; and*

² In line with the requirements of the National Planning Policy Framework, paragraph 56, that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

iii. The dwelling cannot be sold or let at a price which reflects its occupancy condition for a reasonable period to be agreed with the local planning authority.

8. Planning Policy Guidance, which supports the National Planning Policy Framework (NPPF), considers: *How can the need for isolated homes in the countryside for essential rural workers be assessed?* It finds that: *Considerations that it may be relevant to take into account when applying paragraph 79a³ of the NPPF could include:*

- *evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an agricultural, forestry or similar land-based rural enterprise ...;*

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9. I saw that the site is no longer in horticultural use. Nevertheless, as allowed by the wording of the condition, the dwelling might well be suitable for someone who was *last employed, in the locality in agriculture*. It is therefore a part of the Council's stock of housing for rural workers. Consequently, I find that the condition does still serve a purpose and meets the requirements for conditions in the NPPF.
10. To my mind, a tourism business such as holiday lodges and/or caravans does not fall within the definition of a land based rural enterprise. I have studied the 2015 Decision⁴, for a mobile home to support a holiday lodge business in Dorset, where the Inspector found that there was *an essential need for a rural worker to live permanently at the site* and that it would meet *a functional requirement for a residential on-site presence*. There are many differences between the two cases. Nevertheless, even if I accepted that the Appellant's business justified a permanent presence, as I do not accept that the enterprise would satisfy the definition of a *rural worker*, I find that this is of limited relevance. On this issue, I conclude that the evidence does not justify a broader, exemption to include tourism in the definition of a rural worker.
11. The Appellants have put forward limited evidence of demand for dwellings for agricultural workers, or of marketing which reflects the agricultural occupancy condition. Rather, they have argued that the policy requirements to market the property to reflect the condition, and to test the need over a minimum 12-month period, are onerous and unreasonable. Instead, the property, including the surrounding holiday park, was placed on the open market with a guide

³ Now paragraph 80a

price of £1.45 million, with only one viewing. The estate agent attributed the lack of interest to the agricultural occupancy condition putting people off.

12. To my mind, the lack of interest is hardly surprising when the price did not reflect the agricultural occupancy condition. I consider that there is nothing unreasonable about requiring a substantial discount when the original permission was granted as an exception to planning policy to avoid the development of isolated homes in the countryside. I find that the evidence does not show that there is no demand for *dwellingings for agriculture* or that the *dwelling cannot be sold or let at a price which reflects its occupancy condition* and that lifting the condition would not comply with Policy H1a.
13. For all the above reasons, I conclude that there is justification for the condition as currently worded and that the appeal should be dismissed.

David Nicholson

INSPECTOR

Application No: 43/22/0047/A

Address: LAND IMMEDIATELY TO THE NORTH WEST OF THE
NYNEHEAD ROAD/TAUNTON ROAD/TORRES VEDRAS
DRIVE ROUNDABOUT, WELLINGTON

Description: Display of 1 No. internally illuminated flagpole, 2 No.
internally illuminated fascia signs, 3 No. externally
illuminated large wall mounted billboards, 2 No. externally
illuminated small wall mounted, 1 No. non-illuminated
trolley bay sign and 1 No. internally illuminated
freestanding poster display unit on land immediately to
the north west of the Nynehead Road/Taunton
Road/Torres Vedras Roundabout, Wellington

Application Decision: Parish Delegation

Appeal Decision: Approved

Appeal Decision

Site visit made on 26 March 2023 by **Rebecca McAndrew, BA Hons, MSc,**

MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2023

Appeal Ref: APP/W3330/Z/22/3310390 Land immediately to the north-west of the Nynehead Road/Taunton Road/Torres Vedras Roundabout, Wellington

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Miss Victoria George-Taylor, Lidl Great Britain Ltd, against the decision of Somerset West and Taunton Council.
- The application Ref 43/22/0047/A, dated 7 April 2022, was refused by notice dated 13 September 2022.
- The advertisement proposed is a 1 x 6m flagpole style sign.

Decision

1. The appeal is allowed and express consent is granted for the display of the advertisement as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations and the following additional conditions:

- i. The intensity of the illumination of the flagpole style sign permitted by this consent shall be no greater than 440 candela per square metre.
- ii. Notwithstanding submitted information, the sign permitted by this consent shall only be illuminated during the opening hours of the premises to which it relates.

Procedural Matters

2. The appeal arises from the Council's refusal of a flagpole style sign as part of a split decision in which the Council also granted advertisement consent for other signs at the recently developed and now open Lidl store. I have therefore used the description of proposed development in relation to the single sign included on the Council's Decision Notice, rather than the application form, as this defines the part of the proposal refused consent.

3. I have used the appeal site address included on both the Council's Decision Notice and the Appeal Form in considering this appeal as it is more comprehensive than that included on the planning application form.
4. The position of the proposed flagpole style sign was amended during the course of the planning application. Plans have been submitted as part of the appeal which show both the original and amended locations of the proposed sign. As such, I have considered the appeal on the basis of amended Drawing AD50 Rev C.

Main Issue

5. The Council raised no objection in relation to public safety, subject to conditions. From the information before me, I have no reason to disagree with those findings. Consequently, the main issue is the effect of the proposed flagpole style sign on the visual amenities of the area.

Reasons

6. The proposed internally illuminated flagpole sign is a standard type of advertisement and is similar in design and scale to advertisements which can be found at many supermarkets across the country. It would provide a useful way marker for visitors to the supermarket and improve the legibility of the site.
7. The proposed internally illuminated flagpole sign would sit in a logical position in a landscaped area within the Lidl store site boundary, but adjacent to the entrance route to the supermarket off the roundabout/B3187. Whilst the sign would be visible on this main route into and out of Wellington, it would be set back from the highway and would be viewed in the context of the supermarket site. Moreover, this would be the only freestanding sign located away from the main building so would not give rise to visual clutter.
8. In view of the above, the flagpole sign would not appear overly intrusive or excessive in the streetscene. Consequently, it would not unduly harm the visual amenities of the appeal site or the area, including this main route into Wellington.
9. The proposal therefore meets the requirements of Paragraph 136 of the National Planning Policy Framework and Policies D2 and D3 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016. Taken together, these seek to protect the character and appearance of the area, including this route into Wellington, from poorly sited and designed advertisements.

Other matters

10. I note concerns regarding potential for anti-social behaviour in the supermarket car park. However, the application before me relates solely to the proposed flagpole style sign which would be unlikely to promote such a problem. Therefore, I attach limited weight to this matter in considering this appeal.

Conditions

11. I impose two conditions in addition to the five standard conditions. Conditions to limit the intensity of the illumination and to restrict the times when the sign is illuminated will safeguard the amenities of the area, including the living conditions of nearby residents.

Conclusion

12. For the reasons given above, and having regard to all other matters raised, the appeal is allowed.

Rebecca McAndrew

INSPECTOR

Application No: 3/21/21/025

Address: Land at Beacon Road, Minehead

Description: Application for Outline Planning Permission, with all matters reserved, for the erection of up to 12 No. dwellings

Application Decision: Chair

Appeal Decision: Dismissed



Appeal Decision

Site visit made on 28 March 2023 **by J J**

Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/W3330/W/22/3295972

Land at Beacon Road, Minehead, Somerset TA24 5SE

- 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 J Way against the decision of Somerset West and Taunton Council.
- The application Ref 3/21/21/025, dated 24 February 2021, was refused by notice dated 26 November 2021.
- The development proposed is the erection of up to 12 new houses on land south of Beacon Road, Minehead.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted as an outline, with all matters reserved for future consideration. However, the drawings submitted with the application show details of access and layout. The Council have considered these matters as being illustrative, albeit no such annotation was indicated on the drawings. The appellant has confirmed that all matters are reserved, with access details shown to demonstrate that they could be provided.
3. Clevelands and St Michael's Church are listed buildings (grade II and II* respectively), within the Higher Town Conservation Area. As required by Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and of preserving or enhancing the character or appearance of the conservation area.
4. The listing description for Clevelands refers to the property name as Cleveland, and this is the property name given on the ordnance survey plans that have

been provided by the parties for the appeal. However, within the evidence of the parties the property is known as Clevelands, and this was consistent with what I saw at my site visit. I am satisfied that the two properties are the same, and have referred to the name Clevelands in the appeal decision.

5. The appeal site is within 0.5km of the Exmoor Heaths Special Area of Conservation. 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, both directly and indirectly, from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. I shall return to this matter below.

Main Issues

6. The main issues in this case are:

- firstly, the effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon the settings of nearby listed buildings, upon the Higher Town Conservation Area, and upon protected trees;
- secondly, the impact of the proposal upon protected species within the area;
- thirdly, whether the proposal would make adequate provision for surface water drainage; and
- fourthly, whether the proposal would make adequate provision for securing any additional need arising from the development, having particular regard to affordable housing.

Reasons

Character and Appearance

7. The appeal site comprises an area of land upon a steeply sloping hillside. Beacon Road bounds the northern edge of the site, beyond which is a loose-knit row of detached houses positioned within generous gardens. The site is within the Higher Town Conservation Area, a designation which acknowledges the importance of the relationship between the town and the surrounding landscape. North Hill forms an impressive green backdrop to the town, and given its steep sides and proximity to the coast, it forms an imposing landscape feature that can be seen from many miles away. The presence of numerous tall trees, many of which are evergreen, creates a green top to the hill. Tree cover extends down the hillside, including within residential gardens. As such the verdant nature of the hill is a distinct feature of the conservation area, particularly as it makes a striking contrast with the dense urban grain found upon the lower slopes of the hill.

8. There are a variety of tall trees in the appeal site, as well as young trees and saplings, including self-seeded specimens. The long row of mostly evergreen trees that delineates Beacon Road, are a distinctive linear group within the landscape. Not only do they contribute to the verdant appearance of the hill, but they also serve to screen the houses to the northern side of the road. The variety of species and the wide age

ranges of trees within the site is an integral element of the green continuity of the hillside, and they make a positive contribution to the conservation area.

9. Large, detached houses are another feature of the area, many of which derive from the extension of the town during the Victorian and Edwardian periods. The high quality forms of the houses with their rich period detailing reflects the historic development of the town as a coastal resort. As many of these houses are positioned within generous plots, there are mature trees growing amongst them, thereby maintaining the verdant nature of the upper section of the hillside. These features are all part of the significance of the conservation area.
10. Clevelands is one of the large houses that positively contributes towards the character and appearance of the conservation area. Positioned within generous gardens, this villa has an attractive decorative domestic revival style, which is part of the special interest of this listed building. This, and its large size, hipped roofs and mock timber framing make it a distinctive building, and one that can be seen from long distances away. The generous gardens to the property set it apart from the other buildings, and as it is just below the treed hilltop, given its size and position this listed building is a landmark within the town. Not only does the house reflect the historic development of the town over time, but its dominating prominence is part of the significance of this listed building.
11. In addition to Clevelands, another focal point on the hillside is the church. This parish church has a commanding presence within the town, reflecting its social and historic importance. The elevated position of the church, and its large size makes it visible throughout the town, including from the A39 and from along the Esplanade. This, when combined with the imposing height of the tower makes it the focal building within the area, and this is part of the special interest of this listed building. The prominence of the church is enhanced by it being experienced against the treed hilltop. Given its position and its social importance within the town, the church is a landmark building, and this importance is part of the significance of this listed building.
12. Although the proposed houses would be higher up the hill than either Clevelands or the church, they would nevertheless be a harmfully intrusive group within the settings of these listed buildings, and the dwellings would draw the eye. Part of the prominence of the listed buildings is that they are set against a largely uninterrupted verdant backdrop. Whilst acknowledging that all matters are reserved, the provision of twelve dwellings in such a location would be conspicuously noticeable given their position high up the hillside.
13. It might be the case that the houses could be arranged in groups and be designed to minimise their visual impact, such as being two storey, having green

roofs, and timber walling. From some views lower down the hillside and from the old harbour area the houses would not be

visible. Notwithstanding this, the site is plainly visible from a number of other views within and beyond the town, and the hill is such a prominent feature in the area that such measures would not mitigate the essential change in the appearance of the site. The undeveloped verdant nature of the appeal site and the contribution it makes to the continuous green appearance of the hillside would be lost through the provision of not only the dwellings, but through the associated ancillary domestic uses, such as garages, multiple gardens, service roads and accesses.

14. The steep nature of the hillside and the narrow linear shape of the site would constrain any development. Even if the houses were grouped together to reduce their footprints, a characteristic of the area is the individual, detached nature of most of the dwellings, and any grouping of similar styled and sized houses in such a prominent location would be an incongruous addition in such a context. The provision of up to twelve homes on such a steep hillside in an elevated position would be a conspicuous and distracting addition that would erode the landmark dominance of the listed buildings. Furthermore, the houses would harmfully interrupt the verdant continuity and dominance of the hillside and the contribution it makes to the conservation area.
15. The intrusive nature of the development would be exaggerated by the need to undertake ground and levelling works. Even if the dwellings could be designed to accommodate the steep slope, the provision of service roads and multiple accesses would result in ground works that would necessitate the removal of both trees and understorey vegetation. It is the size of the trees and their abundance that gives a sylvan, cohesive identity to the hilltop. The trees within the appeal site as well as those on the site boundaries are integral to the character and appearance of the conservation area, as well as maintaining the green backdrop that sets off the importance of the church and Cleveland's.
16. The National Planning Policy Framework (the Framework) emphasises the importance of trees and the contribution they make to an area, and BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. Trees self-optimize with regard to their location, and in this instance the proposed protection measures have been tightly drawn around the trees. The Monterey Pines and Holm Oaks along Beacon Road are imposing trees with broad canopies. The provision of vehicular accesses would impact both upon the roots and crowns of these trees, but little information has been provided to demonstrate that such works would not be detrimental to their health and wellbeing. The size and age of these trees is such that they would have extensive root spreads, and neither this nor the impact of the slope upon these trees has been assessed with regard to root protection areas.
17. The presence of protected trees, including those protected through being within a conservation area, should inform development. This would be particularly pertinent in this case due to the number of trees, and the positive contribution

they make to the conservation area, and to the biodiversity value of the locality. Even self-seeded trees and those of less than perfect form contribute. A survey of the trees along Beacon Road has been provided, but the tree protection plan does not accurately portray the position of the trees nor their canopy spreads, and little detail has been provided regarding the impact of the development upon either the surveyed trees or any of the others within or near the site. Whilst acknowledging that all matters are reserved, the lack of information before me relating to the direct and indirect impact of the development upon the trees is such that I am not convinced conditions would be sufficient to protect the trees during construction, nor that the development would ensure their long-term health and vitality, and thereby the contribution they make to biodiversity and the character and appearance of the conservation area. Additional planting is proposed to compensate for those trees that would be felled, but the impact of any replacement trees would take many years to make a similar contribution to the area, if ever.

18. Those trees that would be retained would impact on the living conditions of future occupiers, as they would dominate the homes and their gardens, particularly so as several are evergreens. It may be the case that some people would wish to live in a woodland setting, but this cannot be guaranteed for the lifetime of the development. The trees would impact on outlook and light levels, as well as create a sense of enclosure. The close proximity of the trees to any homes, gardens and access roads would require regular and ongoing management and maintenance, and in the case of the Monterey Pines this would include regular cone removal. Having regard to this and the attractive panoramic views that would be available to future occupiers, there would be pressure to remove trees, with the consequential harm to the conservation area.
19. The appellant has drawn my attention to the permission for two dwellings at Beacon Road that are within the conservation area, pointing out that the development was considered acceptable in terms of policy issues. However, these houses are set well back from the road behind generous front gardens, and are away from the steep slope of the hillside on a levelled area. This separation retains the verdant nature of the hillside, and thereby significantly reduces the impact these houses have. Given these differences, these houses do not form a binding precedent for allowing the appeal.
20. The Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case the proposal would lead to less than substantial harm given the size of the development when compared to that of the conservation area and that of the settings of the listed buildings. Nevertheless, these harms carry considerable weight, and the Framework requires that these harms must be weighed against the public benefits of the proposal.
21. The provision of five affordable homes would be a significant public benefit, and such housing would assist in meeting the needs of the local community. Future occupiers would make a small contribution to the local economy, including supporting local services, and there would be a time-limited economic benefit

arising from the construction of the housing. Balanced against this is that the affordable housing has not been secured and this significantly tempers the weight attributable to this public benefit. Given this, the public benefit arising from the scheme would not outweigh the significant harm that would arise to the conservation area and to the settings of the listed buildings.

22. For these reasons the proposal would have a significant and unacceptable impact upon the character and appearance of the area, and the suggested conditions would not mitigate this harm. The harms to the conservation area and to the settings of nearby listed buildings would not be outweighed by public benefits, and consequently the scheme would fail to accord with the Framework and the Act. The proposal would be contrary to Policies NH1, NH2 and NH6, of the West Somerset Local Plan (2016) (LP). These policies require, amongst other things, that development should sustain and/or enhance historic heritage, particularly those elements that contribute to an area's distinctive character and sense of place, that development in a conservation area should preserve or enhance its character and appearance, and that biodiversity and ecological networks are protected and enhanced.

Protected Species and Habitats

23. The site is approximately 0.5km away from the Exmoor Heaths Special Area of Conservation (SAC), and the appellant's Preliminary Ecological Survey and Protected Species Survey Report (dated September 2021) (PEA), refers to the ecological potential of the site for a variety of species, including breeding and feeding opportunities for birds and mammals. Local residents and the Council have referred to the presence of protected species in the area, including bats. In addition, the proximity of the appeal site to the SAC is such that future occupiers would be likely to impact upon the site, both directly and indirectly, including through increased recreational pressures. Having regard to this, an assessment of the impact of the development upon the integrity of the SAC and upon any protected species in the area would be necessary. I shall return to the matter of the impact of the proposal upon the integrity of the SAC later.

24. The impact of the proposal on protected species and habitats has not been assessed in any detail. The scheme would require the felling of trees and the removal of understorey vegetation, all of which could impact upon any protected species living within, near or using the site

for breeding and foraging, including bats. The survey for the PEA was restricted to the accessible parts of the site, and consequently it could be the case that protected species are on the site or use it. A bat survey has been undertaken, but it occurred in February, which is a time of year when bat activity would be very limited. Having regard to these limitations, including that the PEA recommends a further bat survey, the impact of the proposal on protected species cannot be assessed with any certainty.

25. The presence, use or absence of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 –

Biodiversity and Geological Conservation (the Circular) makes it clear that the presence of a protected species is a material consideration when development is being considered. Consequently, it is essential that the presence or otherwise of protected species and the extent that they may be affected by the development is established before planning permission is granted so as to ensure that all relevant material considerations have been addressed. The Circular requires that surveys should only be conditioned in exceptional circumstances. Having regard to the evidence before me, including the proximity of the appeal site to protected habitat sites, a condition requiring a survey would not be acceptable. Furthermore, any measures to increase the biodiversity value of the site would also need to be informed by an up-to-date ecology survey.

26. I have noted the comments of the previous Inspector (appeal ref: APP/W3330/W/20/3257876) and the precautionary actions and work recommendations within the PEA. However, the requirements of the Framework are that the planning system should contribute to and enhance the natural environment, and minimise impacts upon biodiversity. This should be integral to informing the nature of any proposal. In this case the scheme has failed to demonstrate whether the development would have an impact upon protected species and habitats, nor has it been demonstrated that any impacts could be minimised and successfully mitigated. The proposal would be contrary to the requirements of LP Policy NH6, which requires amongst other things, that development should not generate an adverse impact on biodiversity, with measures being taken to protect or mitigate adverse impacts, and to ensure a gain in biodiversity where possible, thereby reflecting objectives of the Framework.

Drainage

27. The scheme proposes a variety of drainage measures, including keeping hard surfaces to a minimum, green roofs, and rainwater harvesting. The appellant considers that suitable sustainable water drainage systems can be provided within the site, including through a proposed infiltration basin.
28. Wessex Water have referred to surface water drainage being rectified as the site progresses. However, the circumstances of this case are such that the matter of drainage would need to be addressed rather than left as a conditional requirement so as to ensure that development could take place without water discharging from the site into other land. This would be particularly necessary given the steep nature of the hillside, and I note that local residents have referred to there already being an existing runoff problem into adjoining land. The removal of trees and vegetation within the site would impact upon infiltration levels, and the concern in this situation would be flooding and ground instability. This is an issue identified in the appellant's Sustainable Drainage Assessment (June 2021) as it is recommended that infiltration capacity needs to be investigated, as well as advising that discharging to a nearby water feature would require the relevant owner(s) consent. In the absence of such detail, and having regard to the nature of the site and the consequential risk to people and property, requiring such detail through conditions provides no certainty that these matters could be satisfactorily resolved.

29. In addition, the Council have also identified other outstanding issues regarding the capacity to accommodate event-specific discharge rates, and that the alterations to the climate change allowances need to be considered. Furthermore, the response of Wessex Water to the appellant refers to a requirement for connection to sewers to occur where infiltration is not possible and that any alternatives have the agreement of all the relevant stakeholders.
30. There are a number of infiltration and drainage uncertainties arising from the proposal and it remains unclear as to whether they could be satisfactorily addressed. In light of these unresolved issues, conditions would not be reasonable. Nor would this uncertainty accord with the requirements of LP Policy CC6, which requires amongst other things, that development will only be permitted if adequate and environmentally acceptable measures are incorporated that provide suitable protection and mitigation both on-site and through displacement to adjoining land.

Affordable Housing

31. Minehead is an area of high demand for affordable housing. The provision of five affordable homes would help to meet some of this need, and would accord with the objectives of LP Policy SC4, which requires on-site provision for affordable housing on all sites of eleven or more dwellings. The appellant has agreed to enter into a legal agreement and would accept a condition in relation to this.
32. The appeal has not been supported by any completed and agreed legal agreement. Consequently, there is no mechanism to ensure that the affordable housing could be provided and maintained as such, including to ensure that occupancy criteria is defined and enforced, and that it remains affordable to first and subsequent occupiers.
33. As regards a condition, the Planning Practice Guidance advises that a negatively worded condition limiting the development that can occur until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. No exceptional circumstances have been put before me explaining why an obligation has not been provided, nor for the necessity of imposing such a condition.
34. As it stands, the scheme would not secure the required on-site affordable housing provision, and would fail to accord with the requirements of the above referenced LP Policy. It follows that any benefits accruing from the provision of these affordable homes is significantly tempered.

Other Matters

35. The Exmoor Heaths SAC are an extensive network of upland heaths, maritime cliffs and slopes that are nationally and internationally recognised and protected. These host priority habitats and species, including trees, plants, grasses, birds, and butterflies as well as other typical species of heaths, and sea cliffs. The close proximity of the site to protected habitat sites is such that the development and future occupiers would be likely to impact upon the SAC having a significant

effect upon its integrity, both directly and indirectly. 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. Had I reached a different conclusion on the main issues, it would have been necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of mitigation and avoidance measures. However, as I am dismissing the appeal for other reasons this has not been necessary.

36. The appellant has referred to the Council's identification of the site within the Strategic Housing Land Availability Assessment (SHLAA) for ten dwellings, and that pre-application advice encouraged the appellant to submit an application. Whilst noting the identification of the site within the SHLAA, I am obliged to consider the scheme on the basis of the issues that it raises. Given the harms raised by the proposal, including the significant harms arising to designated heritage assets, the identification of the site within the SHLAA would not override these.

37. The appellant's concerns regarding the Council's handling of the application and pre-application, are procedural matters that fall to be pursued by other means separate from the appeal process and are not for me to consider.

38. Local residents have raised a number of matters, including loss of privacy, highway safety and construction traffic concerns, use of the site as a public space, the creation of a precedent, and that there have been numerous applications for development on the site. As regards the

latter points, each application and appeal has to be considered on its merits, and the future or any alternative use of the site is not a matter for consideration at the appeal. Of the planning considerations raised, following my findings on the main issues, I have no need to consider them further.

Conclusion

39. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. The proposal would conflict with the development plan and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR