Appeal Decisions – 19 July 2017

Site: APPLEBROOK HOUSE, LYDEARD DOWN HILL, LYDEARD ST LAWRENCE, TAUNTON, TA4 3SB
Proposal: Change of use from orchard in agricultural use to domestic use on land to the east of Applebrook House, Lydeard Down Hill, Lydeard St Lawrence
Application number: 22/16/0017

Reasons for refusal: The site is an established orchard area surrounded on 2 sides by open countryside and paddock area.

The proposed change of use will result in the domestication of a large area of land which in its current condition contributes to the character and appearance of the Conservation Area. The proposal would likely result in the introduction of domestic paraphanalia into the orchard which contributes to the setting of the village, resulting in a detrimental impact upon the character and appearance of the area. As such, the proposal is not in accordance with local policies DM1, DM2 and CP/8 of the adopted Taunton Deane Core Strategy 2011-2028 and policies ENV1 (Protection of trees and woodland, orchards and hedgerows) of the Draft Site Allocations and Development Management Plan (SADMP).

Appeal decision: DISMISSED

Site: BURTS FARM, FORD STREET, WELLINGTON
Proposal: Alleged non-compliance with planning approval at Burts Farm, Wellington
Application number: E/0141/44/16

Reasons for refusal: It appears to the Council that the breach of planning control described at Paragraph 3(a) above has occurred within the last four years.

It appears to the Council that the breach of planning control described at Paragraph 3(b) above has occurred within the last ten years.

The new building is outside the settlement boundary for Wellington and its use for residential purposes is contrary to planning policy.

The National Planning Policy Framework (March 2012) contains guidance on the promotion of sustainable development in rural areas, and that Local Planning Authorities should avoid new isolated homes in the countryside unless there are special circumstances, such as the essential need for a rural worker to live permanently at or near their place of work in the countryside (Paragraph 55). In terms of the Taunton Deane Core Strategy, Policies SP1, CPS and DM2 restrict new developments in open countryside.

The residential use and new building works are detrimental to the character and appearance of the area and increase the need to travel to access services.
The residential use on the Site results in sporadic development in the open countryside that collectively would be detrimental to the amenities of the area and contrary to Taunton Deane Core Strategy Police CP8, DM1 and DM2.

The residential use of the Site results in an unsustainable form of development that would mean that occupiers of the Site are heavily reliant on the private car for most of their day to day needs. As such the proposal is contrary to Taunton Deane Core Strategy Policy SP1.

The Council do not consider that planning permission should be given, because planning conditions could not overcome these objections.

It is therefore considered expedient to prevent the residential use of the Site. The alternative would be sporadic residential development in open countryside contrary to planning policy.

Site: 126 GALMINGTON ROAD, TAUNTON, TA1 5DW
Proposal: Formation of vehicle access to hardstanding at 126 and 128 Galmington Road, Taunton
Application number: 52/16/0029
Reasons for refusal: Adequate provision cannot be made on the site for the parking and turning of vehicles in a satisfactory manner. The proposal is therefore contrary to Section 4 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Taunton Deane District Local Plan/Core Strategy adopted 2011-2028).

On the information currently available, the Local Planning Authority is not convinced that a safe access to the site from Galmington Road can be achieved. The proposal therefore does not meet the requirements of Section 4 of the National Planning Policy Framework (NPPF) and Policy DM1 of the Taunton Deane District Local Plan/Core Strategy (adopted 2011- 2028).

The proposed parking arrangement is considered substandard and consequently would result in vehicles parking on the verge, causing concern to highway and public safety. The proposal is therefore contrary to the National Planning Policy Framework (NPPF) and Policy DM1 of the Taunton Deane District Local Plan/Core Strategy adopted 2011-2028).

Appeal decision: DISMISSED

The Planning Inspectorate

Appeal Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 15 June 2017

Appeal Ref: APP/D3315/W/17/3168514

Applebrook House, Lydeard Down Hill, Lydeard St Lawrence, Taunton TA4 3SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Maurice Hartnell against the decision of Taunton Deane Borough Council.
- The application Ref 22/16/0017, dated 17 July 2016, was refused by notice dated

26 September 2016.

- The development proposed is change of use from orchard in agricultural use to domestic use for adjoining property.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Taunton Deane Site Allocations and Development Management Plan (DMP) was adopted in December 2016.

Application for Costs

3. An application for costs was made by Mr Maurice Hartnell against Taunton Deane Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the Lydeard St Lawrence Conservation Area.

Reasons

Character and appearance of the Conservation Area

5. The appeal site has been used as an orchard and it is partly occupied by a number of fruit trees. The orchard adjoins the rear garden of Applebrook House and the gardens of neighbouring residential properties. To the north and east, the orchard boundaries are largely formed of mature hedges and planting, beyond which is land forming part of the wider open countryside interspersed by farm buildings. A stream flanked by mature trees on the opposite bank forms the southern boundary with a residential property (Court Farm Barn). To my mind, taking account of all of these factors, the orchard clearly lies beyond the more built-up part of the village and it is closely related in its appearance to the adjoining land in countryside uses.

6. The Conservation Area (CA) is mainly made up of buildings of traditional appearance and materials, arranged in rows adjacent to the principal road through the village. Along with the relatively modern Applebrook House, the orchard is situated in the CA. The paddock immediately to the north of the orchard is identified in the Council's Conservation Area Appraisal (CAA) as green space. The green space contributes to a softer, less built-up setting to this part of the village.

7. The proposed domestic use of the orchard would be likely to result in it having a more manicured appearance in the short term, notably as a result of the regular maintenance normally associated with the use of land as a garden. Moreover, the orchard would be likely to obtain a more domesticated appearance over the medium term. This would principally occur as the occupiers add ornamental features such as planting beds and ponds, pathways and patios are constructed and items of garden furniture such as chairs and tables are placed on the land. Domestic use may also lead to pressure to remove the trees and/or boundary hedges, as the occupiers sought to minimise shaded areas and maximise the enjoyment of their garden. Over time this would be likely to erode the orchard's tree cover, which is identified in the CAA.

8. As a result, the more domesticated appearance of the orchard would appear as an alien feature, entirely at odds with the more rural appearance of the land to the north and east and it would appear as a residential intrusion into the countryside. Whilst it has been suggested that the orchard has not been used for agriculture for some years and that it might become neglected in future, those matters do not justify the harm described above.

9. I accept that due to the local topography and the boundary hedges, the orchard is open to limited public views. However, the orchard tree cover is recognised as an attribute of the CA in the CAA and it can be experienced as part of the village setting in views from the adjacent green space. Therefore, in my view the orchard makes a significant contribution to the setting of this part of the village. Whilst the orchard is not identified as green space in the CAA, this cannot be taken to mean that it does not make a meaningful contribution to the character and appearance of the CA. The orchard is not entirely secluded, as there are at least some views over it from the rear elevations and gardens of adjacent housing. Moreover, the availability of limited views would by itself not be a good reason for allowing the proposal to go ahead as it could be repeated too often, thus undermining the character and appearance of the CA.

10. Removing permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 would enable a measure of planning control to be exercised in respect of proposals for future outbuildings in the orchard. Even so, it would not prevent the harm identified above. Consequently, imposing the suggested condition would not make the proposal acceptable.

11. A condition which imposed an obligation on the occupiers to maintain the existing trees and replant them where necessary in perpetuity would be an unduly onerous requirement and may exceed the protection already afforded to trees in the CA. Consequently, I am not persuaded that such a condition would pass the test of reasonableness in paragraph 206 of the National Planning Policy Framework (the Framework).

12. I fully appreciate that the appellant wishes to continue to manage the trees and that he does not intend to make any physical changes to the orchard. I have been given no reason to doubt the appellant's intentions. Even so, planning permission runs with the land. Future occupiers may not wish to manage the orchard in the same sympathetic manner as the appellant. Consequently, I have to afford the appellant's intentions limited weight in determining this appeal.

13. Accordingly, the proposal would cause unacceptable harm to the character and appearance of the CA. Therefore, the proposal would not accord with Policy CP8 of the adopted Taunton Deane Core Strategy (CS), as it would not conserve and enhance the natural and historic environment. The proposal would also not accord with criterion in CS Policy DM1, as it would unacceptably harm the appearance and character of the village.

14. The orchard is outside of the settlement boundary in the DMP. CS Policy DM2 is permissive of various uses in the countryside outside of settlements. In my view, the way in which the policy is worded means that it is not necessarily restrictive of other uses in the countryside outside of those specified. Even so, the policy requires all development to meet a number of tests, including not creating a residential curtilage which would harm the rural character of the area. This test is analogous to the proposal and it would result in the harm that Policy DM2 seeks to avoid. Consequently, the proposal would fail to accord with Policy DM2. Moreover, the proposal would not accord with DMP Policy ENV1, as it would not minimise the impact on the orchard.

Planning balance

15. The harm caused to the CA would be 'less than substantial' as meant by paragraph 134 of the Framework. However, the benefits of the proposal would largely be private and in favour of the appellant. There would be no public benefits arising from the proposal that would outweigh the harm to the CA.

Conclusion

16. The proposal would cause unacceptable harm to the character and appearance of the CA and it would not accord with the Development Plan. Therefore, I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 15 June 2017

Costs application in relation to Appeal Ref: APP/D3315/W/17/3168514 Applebrook House, Lydeard Down Hill, Lydeard St Lawrence, Taunton TA4 3SB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Maurice Hartnell for a full award of costs against Taunton Deane Borough Council.
- The appeal was against the refusal of planning permission for change of use from orchard in agricultural use to domestic use for adjoining property.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 'Appeals' section advises that parties in planning appeals should normally meet their own expenses. However, costs may be awarded where a party has behaved unreasonably and that behaviour has caused another party to incur unnecessary or wasted expenditure in the appeal process (paragraphs 028 and 030). Guidance on what is meant by 'unreasonable' is in paragraph 031. The application for costs was made in writing, in accordance with the guidance at paragraph 035.

3. The application for an award of costs is made on both substantive and procedural grounds. In summary, the applicant claims that the Council has not provided any evidence to substantiate its reason for refusal and has only referred to the officer report. Its reason for refusal is generalised and is not supported by a full and clear assessment. The Council does not explain the significance of the appeal site. The Council failed to consider whether conditions would overcome its objections. The Council sought to expand on its case in its costs response and referred to an additional policy.

4. Procedurally, the applicant says that the Council did not engage with them during the application process and it did not look to find solutions to enable permission to be granted, contrary to paragraphs 186 & 187 of the National Planning Policy Framework (the Framework). The applicant had agreed to an extension of time and the case officer indicated that permission might be forthcoming but the application was refused without warning.

5. In response, the Council says that reliance on the officer's report to support its case at appeal is good practice. The report explains why the proposal would have an adverse visual impact. Conditions would not overcome this harm. Procedurally, the proposal was unacceptable in ~~principle and additional~~

engagement with the applicant would not have addressed this. No pre-application enquiry was made by which the Council's position would have been made clear in advance of an application. The appeal site is clearly outside the defined settlement limits. Policy SB1 of the recently adopted Taunton Deane Site Allocations and Development Management Plan (DMP) re-affirms the

Council's approach to development in the countryside.

6. At paragraph 049, the PPG provides a list of examples of when a Council might be at risk of an award of costs due to unreasonable behaviour concerning the substance of the case. These include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other considerations; failing to produce evidence to substantiate their reasons for refusal at appeal; making vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis, and; refusing permission where suitable conditions would enable the development to go ahead. The list is not exhaustive.

7. Consideration of matters such as character and appearance can often involve judgements being made and parties can legitimately hold different views. Provided those views are underpinned at appeal by a robust body of evidence, a parties' case would be substantiated. The Council's officer report clearly sets out the reasons why it considered that there would be harm caused to the character and appearance of the Lydeard St Lawrence Conservation Area (CA), in a manner proportionate to the scale of the proposal. Its evidence concerns specific impacts of the proposal and is not vague, generalised or inaccurate. The appeal site is in the CA. A more detailed assessment of its contribution to the CA would have been disproportionate, given the scale of the proposal. It is also apparent from the officer report that conditions would not have addressed the majority of the harm identified by the Council. Therefore, there was no good reason for the Council to go into a detailed consideration of conditions. In terms of the appeal, the Council did not suggest a condition to remove 'permitted development' rights for residential outbuildings for a similar reason.

8. The Council's response to the costs application largely responds to the points made by the applicant. It is always likely that there will be some overlap between the merits of a case and responding to a costs application in part made on substantive grounds. However, I do not read the Council's response as making additional submissions on their case at appeal and have not treated it as such. In particular, I do not interpret the reference to Policy SB1 as other than an illustration of a materially unchanged policy background following adoption of the DMP. The applicant was already aware of Policy SB1 as they had referred to it in their own written statement.

9. The use of the Council's officer report to present its case in written appeals is encouraged[1]. Consequently, I do not agree with the

applicant's criticism of the Council for mainly relying on the report, in particular as for the reasons explained above it is sufficiently detailed to address the matters at issue.

10. For the above reasons, I consider that the Council's case is supported by evidence and it has been substantiated at appeal. Conditions could not overcome the harm identified in the reason for refusal. Consequently, the

[1] Procedural Guide: Planning Appeals - England Planning Inspectorate August 2016.

Council has not prevented or delayed development which clearly should have been permitted.

11. The procedural matters raised by the applicant largely concern the processing of the application, rather than the appeal itself. Therefore, there is no firm evidence before me that the Council acted and behaved in any of the ways listed at paragraph 047 of the PPG or otherwise in a manner which could be regarded as unreasonable in relation to appeal procedures.

12. At paragraph 048, the PPG details when the Council's handling of the planning application might lead to an award of costs. However, this is mainly concerned with cases where the Council fail to determine applications, as opposed to when planning permission has been refused. Otherwise, paragraph 033 advises that costs cannot be claimed for the period during the determination of the application, although behaviours and actions during that time can be taken into account.

13. Whilst the case officer might have verbally indicated that the application would be supported, there is no firm evidence in this respect. Moreover, officer advice is not binding on the Council and is not in itself evidence of unreasonable behaviour. I can appreciate the applicant's sense of frustration at the manner in which the application appears to have been determined after agreeing an extension of time. Even so, the Council's behaviour and actions in relation to the application, although perhaps falling short of the proactive approach encouraged by the Framework, were also tempered by their fundamental objections to the proposal which were incapable of resolution. Consequently, these matters do not fall within the scope of what could be regarded as procedurally unreasonable behaviour under the PPG.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Stephen Hawkins

INSPECTOR

Appeal Decision

Inquiry opened on 13 June 2017

Site visit made on 12 June 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 3 July 2017

Appeal Refs: APP/D3315/C/16/3162172, 3162174, 3162175, 3162176

The Little Barn, Burts Farm, Ford Street, Wellington, Somerset, TA21 9PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Steven Wright, Mrs Kim Wright, Mr Stephen Spiller and Mrs Holly Spiller against an enforcement notice issued by Taunton Deane Borough Council.
- The notice was issued on 3 October 2016.
- The breach of planning control as alleged in the notice is without planning permission:
  a) The erection of a new building on the site ("The Little Barn"); and
  b) The use of The Little Barn as a residential dwelling.
- The requirements of the notice are:
  a) Permanently cease the use of the building known as The Little Barn for residential purposes;
  b) Demolish The Little Barn and permanently remove all resulting demolition materials from the site.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Town and Country Planning Act 1990 as amended (the Act).

Decision

1. The enforcement notice is varied in Sections 5 and 6 by deleting within them all of sub-section (b).

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

Preliminary matters and background

3. The appeal property is a detached single storey building located within its own plot of land at Ford Street, Wellington. It is occupied by three generations of the same family as their main dwelling house; the adult members of the family being the four appellants.

4. The appeal was initially made on ground (d) only. As such, part of the appellants' submitted written case was that in 2012 substantial repairs and restoration of an older building (used as a separate dwelling) had been carried out following heavy storm damage, and that no new building had therefore been erected. In this regard I wrote to the parties[1] before the Inquiry to advise

[1] Pre-Inquiry Note

that I considered that part of the submitted written evidence conflicted with the ground (d) appeal and appeared more consistent with an appeal on ground (b).

5. However, subsequent to the above the appellants conceded that the building subject of this appeal is in fact a new building which replaced the older one that had occupied a similar (but not the same) position. That being the case it was confirmed on behalf of the appellants at the Inquiry that the ground (d) appeal remained, and I was requested to also consider an appeal on ground (f). The Council did not object to the ground (f) appeal being introduced at that stage and I have therefore determined the appeal on these two grounds.

6. In reaching my decision I have also taken into account the further documents submitted at the Inquiry.

7. All oral evidence to the Inquiry was given under oath or affirmation.

Reasons

The appeal on ground (d)

8. The enforcement notice was issued on 3 October 2016. The breach of planning control alleged in Section 3 of the enforcement notice contains two elements. Firstly; that a new building has been erected, and secondly; that it is used as a residential dwelling. In the reasons for issuing the notice at Section 4 the Council say that the erection of the building occurred within the last 4 years[2] (hence since 3 October 2012). With regard to the use of the building as a residential dwelling the Council's reasons state that the breach occurred within the last 10 years[3] (hence since 3 October 2006).

9. The appellants argue that the building was substantially completed more than 4 years prior to the issue of the notice, such that it is immune from enforcement action. Also, that before the building's erection the land was already in residential use for more than 10 years prior to the issue of the notice, such that the use of the existing building as a residential dwelling is also immune from enforcement action.

10. In pursuing an appeal on ground (d), the onus is on the appellants to establish, on the balance of probability, that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters alleged in the notice.

Evidence in support of the appeal

11. Steven Wright gave oral evidence in support of the appeal. He stated he carried out most of the building works in the construction of the new house starting in July 2012, with assistance from friends, family members, and paid contractors to carry out certain elements of the work. At that time of the works he and his wife (Kim Wright) were living in the separate dwelling house (Burts Farm) while his daughter (Holly Spiller) and her husband (Stephen Spiller) temporarily occupied a mobile home brought onto the site. Mr and Mrs Wright sold Burts Farm and moved into the appeal building with the Spillers in 2014.

12. He stated that by around the end of August or the beginning of September 2012 the building was fully constructed with walls, roof, doors and windows,

[2] S.171B(1) of the 1990 Act
[3] S.171B(3) of the 1990 Act

and internal layout completed including bedrooms, bathrooms, kitchen and living areas and electrical and plumbing works installed. At that point he stated that his daughter and her family moved into the building and began permanently occupying it as their main dwelling.

13. In cross-examination he stated that at the time of a visit to the site by the Council's enforcement officer, on 29 October 2012, the outside of the site looked like a 'bomb site' because a lot of the remnant materials had not yet been cleared from the site. However, he insisted that the appeal building was finished and had already been occupied by his daughter and her family since at least the beginning of September 2012. When asked how he could be so sure of the date he stated that he could remember his wife's (Kim Wright's) birthday party on 29 September 2012 which was held in their house (Burts Farm). He recalled that the appeal building was finished and had already been occupied by his daughter and her family at the time of the party.

14. No contractors or suppliers invoices or receipts were produced by Mr Wright, nor any bank statements showing any payments. In cross-examination he stated that he paid Mr Oakley and others in cash for those elements of the build he did not do himself. With regard to the copies of contractors' quotations[4] for carrying out of future works I consider that they are not evidence in themselves of when any works took place and hence they add no weight in support of allowing the appeal in that regard. However, I note that simply in terms of when they are dated they are not inconsistent with Mr Wright's oral evidence regarding when works to erect the building were undertaken.

15. Andy Oakley also gave oral evidence to the Inquiry. He is a building contractor and also a long-standing family friend. He stated that he arrived at the site during the first week of August 2012 and stayed on site throughout that month to help construct the appeal building. He also recalled his birthday (21 August 2012) at the site; that Holly Spiller had made a birthday cake for him in Burts Farm, and that she and her family moved into the completed appeal building a few days afterwards, by the end of August at the latest.

16. In cross-examination he confirmed that the building had been completed, with the kitchen installed and connected, toilets and water connections finished, and most of the electrical wiring work finished, and then occupied by the end of August 2012. He confirmed that the building was fully finished and occupied by the Spillers by the time of Kim Wright's birthday party which he attended on 29 September 2012.

17. Becky Wright gave oral evidence to the Inquiry also recollecting that her sister (Holly Spiller) and her family moved into the appeal building prior to her mother's birthday party on 29 September 2012.

18. Mandy Love is a family friend and gave oral evidence to the Inquiry that she recalled attending Kim Wright's birthday party on 29 September 2012. She remembered that at that time some of the food for the party celebration was stored with Holly Spiller in the appeal building and that it was fully finished and lived in by the Spillers at that time.

[4] Documents 36 and 37 within Document 1 submitted to the Inquiry

19. Sean Nightingale is a family friend. He gave oral evidence to the Inquiry that the appeal building was externally completed around the end of May or beginning of June 2012. Under cross-examination he conceded that that date differed from the date recalled by other witnesses. He accepted that his recollection was imprecise and that he had not at any time seen the inside of the appeal building.

20. I have also taken account of documentation that had previously been submitted by the appellants to the Council as part of an earlier application for a Lawful Development Certificate (LDC) for *existing use as a single dwelling house*. I should point out that all of that evidence was submitted on the appellant's claimed belief that the appeal building was a restoration of the existing building, rather than it constituting a new building subject of this appeal. The Council considers that change casts a shadow on the reliability of the appellants' evidence in this appeal. Nonetheless, I consider it retains a degree of relevance to this appeal in terms of *when* building works and occupation of the appeal building occurred. In this regard I consider the LDC evidence overall does not undermine the appellants' claim that the building works commenced in July 2012 and were substantially complete and the building occupied by early September 2012.

21. Due to his uncertainty of when the works took place I attach no weight to the oral testimony of Mr Nightingale. With regard to the four other witnesses in support of the appeal, I consider that their testimony was unambiguous, precise (in terms of pinpointing completion and occupation of the building to before 29 September 2012 - the date of Mrs Wright's party) and corroborative of each other. Taken together their oral evidence was credible. It was given on sworn oath and in the knowledge of the serious criminal liability that could arise if it was later discovered that it included statements which they knew to be false or did not believe to be true.

22. For these reasons, I find the appellants' evidence convincing and attach substantial weight to it in support of the appeal.

The Council's evidence

23. Oral evidence was given to the Inquiry by Matthew Bale, an Area Planning Manager employed by the Council.

24. With regard to the events that took place in 2012 his evidence on this ground of appeal is based on his professional opinion following his examination and analysis of the relevant documents submitted to the Inquiry, rather than that of a first-hand witness to those events. That of course is no different an exercise than is before me in reaching my decision. However, given his considerable experience and his professional planning expertise I attach due weight to his evidence.

25. He referred to his analysis of photographic evidence of the site and a hand written letter from Mr Steven Wright[5]. Reference was also made to the following documents: a complaint[6] received by the Council on 23 October 2012 alleging building works taking place at Burts Farm, the subsequent Council

[5] Appendices A-E to Mr Bale's proof of evidence
[6] Document 2 submitted to the Inquiry

officer's (Mr Hardy's) record[7] of his site inspection on 29 October 2012; and a letter from Mr Hardy to Mr Wright dated 6 November 2012[8].

26. With regard to the photographic evidence Mr Bale acknowledged that within the timeline of the images there was a gap from March 2011 to 2014. Consequently, I find that the images do not therefore contradict the appellants' evidence that the works were carried out in July/August 2012.

27. The note of the complaint received by the Council on 23 October 2012 is unclear; it says *"an extension being built or may be new structure"*. It does not indicate when building works commenced or what stage they had reached. The description could be either of a building at an early stage of construction, or one substantially completed but with minor finishing works in train. I consider it is of limited evidential value since it is no more than a cursory reference to describe the generality of the subject of the complaint.

28. Mr Bale considered it unlikely that if the building was substantially complete and occupied by early September the complainant would have waited until 23 October to contact the Council. However, that is speculative. There are many potential reasons why there may have been a delay in contacting the Council. For example, if the complainant was unable to see the site every day it could have been the first time he/she had seen the site in several weeks or

months, perhaps if on holiday, or away from the area for any other reason.

That of course is equally speculative. Ultimately, the complainant did not give evidence to the Inquiry to explain the circumstances, and hence on balance I

consider that the date of the complaint does not make the appellants' case any

less probable.

29. The site inspection record is also regrettably short on detail. It states in a box titled "Activities or Development Observed": *"Timber framed building being constructed".*

And then in a box titled: "Notes of any Discussions":

> *"Met Mr Wright who would not let me in so we talked over the wall.* ***He explained that the building that stood on the site was falling down and they had to replace it. The new building is on the same footprint and same height but the end wall has been moved away from the highway.*** *I said I think p.p* (planning permission) *is required but he was not convinced. Could not take photos or enter site".*

30. Mr Wright in his oral evidence denied refusing access and Mr Hardy is retired and was unavailable to give written or oral evidence to the Inquiry.

31. Mr Bale took the view that the highlighted text in Mr Hardy's note simply records what Mr Wright told him at the time. I agree that must be so with the first highlighted sentence. I accept that it may also be so with the second sentence, but I am not convinced that is the case. It could equally be interpreted as being a record, albeit quite limited, of what Mr Hardy saw himself; *The new building*...etc. If that is the case Mr Hardy arguably described a fully formed building. If I follow Mr Bale's interpretation; that the second sentence is merely a record of an exchange of words, it is curious that Mr Hardy did not note

any detailed description at all of what he saw for himself in

[7] Document 3 submitted to the Inquiry
[8] Document 4 submitted to the Inquiry

terms of the stage of completion of the building, other than: *"Timber framed building being constructed".* That description is again very cursory in nature and does not give any real sense of what stage the building had reached.

32. In re-examination Mr Bale made the point that if the building had its external walls at that time, the timber frame would not have been visible to Mr Hardy. However, that interpretation assumes that it was indeed visible. It is not clear to me from the brief and limited notes, taken as a whole, that that is what Mr Hardy did see. It could be a loose description of the fully formed timber clad building. On balance I find that the record is open to some interpretation and calls for speculative conclusions by the reader. As such, it is not clear and detailed enough to convincingly contradict the appellants' evidence.

33. Mr Hardy did not see inside the building (substantially completed or not) and hence nothing can be taken from the record with regard to whether occupation had commenced. It is the appellants' case of course that the building was fully finished and occupied at that time, although the site still had the 'bomb site' appearance Mr Wright described in his evidence.

34. The letter from Mr Hardy to Mr Wright dated 6 November 2012, and Mr Wright's reply letter dated 13 November 2012, provide no greater clarity as to whether the building was substantially completed and occupied by the time of the site inspection on 29 October 2012.

35. In conclusion, and with particular regard as to whether the building was substantially completed and occupied prior to the 3 October 2012, I find that that these documents, taken together, are of questionable weight due to their lack of detail and clarity. In making that finding I make no criticism of Mr Bale in interpreting them in the way that he did so. It was a reasonable interpretation, but equally they could be interpreted differently as I have set out above.

Assessment

36. The documentary evidence to the Inquiry does not significantly diminish the appellants' case. Additionally, as I have set out previously, the oral evidence of witnesses in support of the appeal was unambiguous and credible. For these reasons, I find the appellants' evidence convincing and attach considerable weight to it in support of the appeal.

37. However, against that I must weigh the evidence of the Council. The judgment in *Gabbitas v SSE and Newham LBC [1985] JPL 630* makes it clear that if the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss an appeal in an LDC appeal provided the appellant's evidence alone is sufficiently precise and unambiguous. That test equally applies to an Inspector in an appeal against an enforcement notice on ground (d).

38. The Council's evidence comprised of a professional opinion based on an examination and analysis of the relevant documents in the Inquiry. In my view, as I have already said, the Council's interpretation was a reasonable one. However, in weighing the Council's evidence against the weight of the sworn testimony of witnesses to the events in 2012, I find on balance that it does not

make the appellants' version of events less than probable.

39. I therefore come to the conclusion that on the balance of probability the appeal building was substantially completed and occupied as a residential dwelling house prior to the 3 October 2012, and probably by August/September 2012, hence more than 4 years before the issue date of the enforcement notice. Consequently, the appeal building itself was immune from enforcement action when the notice was issued. However, that is not the end of the matter.

40. It was argued for the appellants that the land occupied by the appeal building was already in residential use previously when the former barn was as an overspill to Burts Farm. It was said that friends of the appellants and others stayed in it when visiting. From 2009 the former barn was permanently occupied by the Spillers as a separate dwelling house until its replacement with the current appeal building in the summer of 2012. Thus, it is argued, the land has always been in continuous residential use.

41. However, I find this argument to be without merit. When the Spillers occupied the (first) Little Barn as a single dwelling house in 2009 it constituted a material change of use from its previous use as ancillary accommodation to Burts Farm, sub-dividing the single planning unit of Burts Farm into two units. That being the case the change of use of the first Little Barn to use as a single dwelling house would have become lawful after 4 years, that is to say in 2013. But that did not occur because, as has been found, the first Little Barn was replaced with the new appeal building in the summer of 2012. When the appeal building was erected and occupied in 2012 it began a new chapter in the planning history of the site, with no lawful use of the land for two single dwellinghouses.

42. Moreover, the Courts[9] have established that if a dwellinghouse is erected unlawfully and used as a dwellinghouse from the outset, the unlawful use can properly be the subject of enforcement action within 10 years, even if the building as a structure becomes immune from enforcement action after 4 years. That is the case here. The appeal building was erected and occupied as a residential dwelling house in the summer of 2012. Its unauthorised use as such commenced at the same time, and thus falls short of the 10 year period for immunity[10] referred to in the notice.

43. For all the above reasons I conclude that breach (a) in the enforcement notice is immune from enforcement action, while breach (b) in the notice is not immune. The appeal on ground (d) therefore succeeds to this limited extent and I have varied the notice accordingly.

The appeal on ground (f)

44. An appeal on ground (f) is a claim that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.

45. Given that I have found the building, as a structure, is immune from enforcement action, it is now only the use of the building as a residential dwelling house that is relevant to this ground of appeal.

46. The appeal on ground (f) was argued on the basis that if the building was found to be lawful it should be put to a good use, rather than remaining

[9] Inquiry Documents 5 and 6 - *Lawson Builders Ltd, Paul Lawson and Jennifer Lawson v SSLG and Wakefield MDC [2013] EWHC 3388 (Admin)* applying *Welwyn Hatfield DC v SSCLG and Beesley [2011] UKSC 15*.
[10] S.171B(3) of the 1990 Act

unused. However, there is no ground (a) appeal and deemed planning application for the use of the building as a dwelling house before me, and I am unable to grant any planning permission under ground (f). Thus any future use of the building would be a matter to resolve between the Council and the appellants either through a planning application or, if necessary, by way of a LDC application to confirm the lawfulness of any proposed use.

47. The notice requirement is to permanently cease the use of the building for residential purposes. Hence, it goes no further than simply requiring the unauthorised use to cease. It therefore does not exceed what is necessary to remedy the breach of planning control.

48. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Robin Upton	Director – Planning WYG
He called	
Steven Wright	Appellant
Andrew Oakley	Building contractor/family friend
Becky Wright	Appellants' daughter
Mandy Love	Family friend
Sean Nightingale	Family friend

FOR THE LOCAL PLANNING AUTHORITY:

Mr Gavin Collett	Magdalen Chambers
Of Counsel	
He called	
Mr Matthew Bale	Area Planning Manager

DOCUMENTS SUBMITTED AT THE INQUIRY:

1 Folder containing LDC application and related documents 1-54
2 Copy of complaint form dated 23 October 2012
3 Copy of enforcement officer site inspection record
4 Letter from Mr Hardy to Mr Wright dated 6 November 2012
5 Transcript of judgment *Welwyn Hatfield BC v SSCLG & Beesley [2011] UKSC 15 (J.1188)*
6 Transcript of judgment *Lawson Builders Ltd, Paul Lawson and Jennifer Lawson v SSLG and Wakefield MDC [2013] EWHC 3388 (Admin)*

Appeal Decision

Site visit made on 6 June 2017

by J J Evans BA (Hons) MA MRTPI

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

Decision date: 10 July 2017

Appeal Ref: APP/D3315/W/17/3170712
126/128 Galmington Road, Taunton
TA1 5DW

- 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 Mrs Joan Viveash and Mrs Gemma Richards against the decision of Taunton Deane Borough Council.
- The application Ref 52/16/0029, dated 25 November 2016, was refused by notice dated 1 February 2017.
- The development proposed is the construction of new vehicle access to existing hard standings, to include lowering kerbstones.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The original application description proposed the construction of a new vehicle access to existing hard standings, and also the lowering of kerbstones. From my visit it was apparent that the kerbstones are not within the red application site line area. Consequently, for the avoidance of doubt I have dealt with the development that is included within the red site line as shown on the submitted drawings.

3. The front garden of 128 Galmington Road was laid to gravel, and between 128 and 126 Galmington Road was an area of hardstanding, with the rest of the front of No 126 being lawn. Although not referred to in the original application description, the drawing entitled “Proposal new acc” shows part of the front garden of No 126 to be gravelled. Notwithstanding the description above, it is clear from the submitted drawings that the proposal includes the provision of hardstanding in front of No 126. I have determined the appeal having regard to this.

4. As part of their appeal submission the appellants have provided a drawing entitled “Proposed Amended”, which shows a revised parking scheme. However, there are several differences between the appeal scheme and that considered by the Council. The scheme differs significantly from the original application and as others have not had an opportunity to comment I am unable to accept it as an amendment to the proposal. I have therefore determined the appeal on the basis of the proposal as considered and refused by the Council.

Main Issue

5. The main issue is the effect of the construction of a new vehicle access to existing and proposed hard standings on highway safety.

Reasons

6. The appeal properties are two semi-detached houses positioned within a mostly residential area comprising similar aged and styled dwellings. Like many of the nearby houses, the appeal properties are set back from the footway behind regular shaped front gardens. To either side of Galmington Road there are grass verges that separate the carriageway from the footways. On-street parking is in places restricted by double yellow lines, although designated parking areas are provided within the highway.

7. There is a signal controlled pedestrian and cycle path crossing close to the appeal properties, and the crossing's zig-zag keep-clear markings extend in front of the gardens of both the houses. There are also wooden bollards within the grass verge to prevent parallel parking near to the crossing. Just beyond the crossing is the junction with College Way. From what I observed during my mid-day site visit, I do not disagree with the Council's description of the road as being well-used.

8. Even with the provision of gravelled areas for both houses, the constrained nature of the parking would be such that vehicles would not be able to enter and leave in forward gear. Reversing manoeuvres would have to occur, particularly if other cars were parked, and these actions would be very close to the controlled pedestrian crossing. Such movements would thus be a danger to other users of the highway particularly as these users would be concentrating on the activity within the road, the crossing and nearby junction, rather than what is occurring within the appeal properties.

9. At my visit I saw cars were parked within the appeal site. It was evident that vehicles could pass between the bollards in the grass verge, and from the tyre marks present that manoeuvring into the existing spaces includes using the footway and verge. I appreciate parking is already occurring at both properties. Nevertheless, the proposal would increase movements beyond that which already occurs, to the detriment of users of the public highway.

10. Furthermore, in addition to negotiating the bollards, there would also be partly restricted visibility due to a lamp-post within the footway and a mature tree within the verge. These circumstances when taken together with the proximity of the junction and crossing, as well as the limitations of the proposed access and parking layout would not be the safe and secure arrangements for all users of the highway sought by the National Planning Policy Framework (the Framework).

11. The appellants have drawn my attention to the parking difficulties in the area, and consider the Council have not responded to local circumstances, as required by the Framework. However, the requirements of the occupiers of the houses to have off-road parking would be a personal benefit that would not outweigh the harm I have found. Moreover, on-street parking was present nearby, although I accept that this would be available for anyone to use.

12. I noted that elsewhere along Galmington Road there are properties that have driveways, including some that are near a crossing. However, I do not have the full planning history of these properties before me, nor are they in such close proximity to a road junction as the appeal site. In any case each scheme has to be treated on its own individual merits in accordance with the

requirements of the current development plan and all other material considerations, as I have undertaken in this instance.

13. Thus the proposal would have an unacceptable impact on highway safety, contrary to the requirements of the Framework and Policy DM 1 of the Taunton Deane Core Strategy (2012). This requires amongst other things, development not to lead to road safety problems.

Other Matters

14. Finally, the appellants concerns regarding the Council's handling of the application are procedural matters. Such matters fall to be pursued by other means separate from the planning appeal process and are not for me to consider.

Conclusion

15. For the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR

APPEALS RECEIVED – 19 JULY 2017

Site: BARE GRILLS, 45 BRIDGE STREET, TAUNTON, TA1 1TP

Proposal: Installation of 3 No. bulkhead light fittings to the front elevation of 45 Bridge Street, Taunton (retention of works already undertaken)

Application number: 38/17/0045LB

Appeal reference: APP/D3315/Y/3173605

Start Date: 19 JUNE 2017

Site: SPRINGDALE, 41 GREENWAY, MONKTON HEATHFIELD, TAUNTON, TA2 8NF

Proposal: Erection of detached dwelling with associated works to the rear of 41 Greenway, Monkton Heathfield

Application number: 48/16/0045

Appeal reference: APP/D3315/W/17/3172397

Start Date: 20 JUNE 2017
