Appeal Decisions – 4 April 2017

Site: 8 BLAGDON CRESCENT, TAUNTON, TA1 4TQ
Proposal: Erection of ground floor extension to the rear and first floor extension over garage at 8 Blagdon Crescent, Comeytrowe.
Application number: 52/16/0016

Reasons for refusal

1. The proposed first floor extension, by virtue of its, design, and lack of subservience, appears as an incongruous addition to the street scene, detracting from the character and visual amenity of the area. The proposed extension in this position does not relate well to the dwelling and fails to respect the character of the area and therefore the proposals conflict with Policies DM1 and H17 of the Taunton Deane Core Strategy.

Appeal decision: DISMISSED

Site: LAND TO THE REAR OF 60 SPRINGFIELD ROAD, WELLINGTON, TA21 8LG
Proposal: Erection of dwelling to the rear of 60 Springfield Road, Wellington
Application number: 43/16/0061

Reasons for refusal

The proposed development, by virtue of its siting outside the defined settlement limits and within an area designated as 'green wedge', fails to meet the policy requirements for which the designation of the area was established. In particular, the proposal fails to retain the green wedge and is unable to clearly demonstrate how the development would protect and conserve the landscape character of the area or enhance its setting within the green wedge. The development also fails to meet the policy criteria for 'development in the countryside' and there are no material considerations that indicate otherwise. The proposal is therefore contrary to Policies CP8, SP1 & DM2 of the Taunton Deane Core Strategy (September 2012) and
Policy SB1 of the Submission draft of the Site Allocations and Development Management Policies.

The proposal constitutes overdevelopment of a site which is very restricted in terms of its width and its backland position, and as such would not provide a proper residential environment for future occupiers of the dwelling. It would lead to overlooking of neighbouring residential gardens, where people have a right to expect a certain amount of privacy, and would lead to a loss of amenity, particularly through overshadowing and loss of direct sunlight to the residential curtilages immediately adjacent to the north. This amounts to town cramming, with no thought given to an appropriate pattern of development and makes the proposal contrary to policy DM1 of the adopted Taunton Deane Core Strategy and policy D7 (design quality) of the publication draft of the Taunton Deane Site Allocations and Development Management Plan.

The site access has poor width and inadequate visibility onto the public highway that would rely on visibility over third party land. Also, it has not been demonstrated that any vehicle using the site would be capable of turning within the curtilage marked by the red line and therefore re-entering the public highway in forward gear and so would be likely to lead to manoeuvring on the public highway. As such, the proposal is not suitable to cater for the additional traffic which would be generated by the proposed dwelling and would

result in conditions of danger for all other users of the road, making the proposal contrary to policy DM1.b of the adopted Taunton Deane Core Strategy.

Appeal decision: DISMISSED

Site: MILLGROVE HOUSE, STAPLEGROVE MILLS, MILL LANE, STAPLEGROVE, TAUNTON, TA2 6PX
Proposal: Outline application with all matters reserved for the erection of 2 No. two storey detached dwellings with double garages at Millgrove House, Staplegrove

Application number: 34/16/0010

Reasons for refusal: The proposed development represents residential development outside the defined settlement limits for Taunton. It is, therefore, contrary to policy CP8 of the Taunton Deane Core Strategy. The proposal would result in sporadic development in the open countryside, detrimental to the visual amenity of the area, contrary to Policy DM1 of the Taunton Deane Core Strategy.

Appeal decision: DISMISSED

Site: KEDGET BARTON FARM, HOMEMEAD LANE, CHURCHSTANTON, TAUNTON, TA3 7RN
Proposal: APPLICATION FOR THE RETENTION OF THE LAWFUL USE OF A DWELLING (USE CLASS C3) (NOT TIED TO EITHER AN AGRICULTURAL AND/OR EQUINE RELATED OCCUPANCY OR SIMILAR) AT KEDGET BARTON FARM, CHURCHSTANTON

Application number: 10/14/0034LE

(1) Reasons for refusal: As Conditions 3 and 4 of planning permission 10/2004/028 appear to have been breached and these were both conditions precedent, the Whitley principle is effectively engaged in this matter. However, the Local Planning Authority considers that there are exceptions to the Whitley principle which apply in this case, which mean that the dwelling as constructed on site can be regarded as having been built pursuant to and in accordance with the planning permission 10/2004/028.

(2) Although the constructed dwelling differs in location and physical differences from the approved plans the significance of the differences is not material and the substantial usability of the property is as permitted by planning permission 10/2004/028. Although differences exist between what was permitted and what was built these differences are not sufficient to render the dwelling as built so different from that which was permitted by permission 10/2004/028 so as to categorise it as not having been constructed pursuant to this planning permission.

Appeal decision: ALLOWED

Enforcement Appeal

Site: SOUTH SIDE OF PAYTON ROAD, WESTFORD, WELLINGTON
Alleged Breach of planning control: Removal of hedgerow on south side of Payton Road, Westford

Reference Number: E/0072/43/16

Appeal decision: DISMISSED

The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 23 February 2017

Appeal Ref: APP/D3315/D/16/3163907 8 Blagdon Crescent, Taunton TA1 4TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs James Russell against the decision of Taunton Deane Borough Council.
- The application Ref 52/16/0016, dated 20 June 2016, was refused by notice dated 3 October 2016.
- The development proposed is single storey extension to the rear and first floor extension over the existing garage.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the existing dwelling and that of the surrounding area.

Reasons

3. The appeal site is located in a residential street consisting of detached dwellings with integral garages which sit forward of the main elevation. Although some of the properties on this side of the street benefit from minor alterations to the front, there is a general sense of uniformity and variations in appearance are mostly minimal.

4. Policy DM1 of the Taunton Deane Core Strategy[1] (CS) requires proposals for new development to, amongst other things, ensure that the appearance and character of any street scene would not be unacceptably harmed. In addition, Policy H17 of the Taunton Deane Local Plan 2004 (LP) permits extensions provided they do not harm the form and character of the original dwelling and are subservient to it in scale and design.

5. The proposal would involve the erection of a ground floor extension to the rear and a first floor extension with dormer structure above the existing garage. Although the Council have not raised any concerns regarding the rear extension, they consider the first floor side extension would detract from the character of the existing dwelling and would be harmful to the character and appearance of the surrounding area.

[1] Taunton Dean Borough Council Core Strategy 2011-2028

6. I agree with those concerns. At present, the garage is set forward of the main dwelling, a design feature which is replicated in the neighbouring properties and which makes a positive contribution to the general sense of uniformity in the street. However, the proposed first floor extension would result in a 2 storey projecting structure alongside the main elevation. It would appear as a significant addition to the property and would increase both its bulk and scale. In doing so, it would emphasise the differences in setback between the main elevation and that of the extension, resulting in an awkward appearance that would materially harm the form and character of the original building.

7. In addition, the proposed extension would appear in stark contrast to the neighbouring dwellings, extending the existing elevation and introducing a design which would appear out of keeping with its surroundings. It would significantly erode the existing sense of uniformity within the street and result in an unacceptable level of harm to the wider street scene. Likewise, while I acknowledge that the proposed lean-to roof would mirror that of the section of existing roof formed by the previous porch, as a design feature it would nevertheless appear out of keeping with the neighbouring dwellings. This would further erode both the character of the existing building and that of the wider street scene.

8. Although I note the appellant considers the porch extension to the front would be more incongruous than the proposed extension, I do not agree that this would be the case. The porch to the front is a modest structure which, in view of its size, has only a limited impact on the character and appearance of the existing property and the wider surroundings. As such, any harm remains within acceptable levels and I do not consider that it provides a justifiable precedent for the development proposed.

9. Consequently I find the proposal would be harmful to the character of the dwelling and have an unacceptably harmful impact on the street scene. As such, it would be contrary to LP Policy H17 and CS Policy DM1.

Conclusion

10. For the reasons set out above, I conclude that the appeal should be dismissed.

Rory Cridland

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 31 January 2017

by H Porter BA(Hons) PGDip IHBC

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

Appeal Ref: APP/D3315/W/16/3160923

Land to rear of 60 Springfield Road, Wellington, Somerset TA21 8LG

- 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 E Marrs against the decision of Taunton Deane Borough Council.
- The application Ref 43/16/0061, dated 24 May 2016, was refused by notice dated 23 August 2016.
- The development proposed is described as 'erection of dwelling'.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs E Marrs against Taunton Deane Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed development on the character and appearance of the area; the effect of the proposed dwelling on the living conditions of neighbouring occupiers and whether the new dwelling provides satisfactory accommodation for its occupants; and the effect on highway safety.

Reasons

4. The appeal site is located towards the north west of Wellington, where the settlement boundary bisects the long, narrow garden plots that extend towards a mill stream and the open countryside beyond. The portion of domestic gardens excluded from the settlement helps provide a clear distinction between the edge of the settlement and the semi-rural landscape that defines the wider context. Concerning the lower portion of the rear garden associated with 60 Springfield Road, the appeal site is accessed via a narrow track with an intimate back-lane character. There is a strong local townscape and cohesion in built form established by a strong building line, plot rhythm, consistent 2- storey scale and material palette of red brick and natural slate. Where two storey structures exist, they are clearly ancillary to the primary terrace frontages.

5. The appeal scheme would introduce a two-bedroom bungalow on the narrow strip of garden that slopes gently towards the mill stream. In contrast to the

local plot rhythm, the development would have an elongated footprint occupying a significant portion of the existing garden area. The proposed off- street parking area would push the end gable into the plot, which would be clearly at odds with the established building line that characterises the terraces fronting Riverside.

6. Irrespective of the final material treatment, it is clear that the proposed fenestration, roof form and overall proportions would sit uncomfortably within the local street scene, undermining its cohesion and strong sense of place. Furthermore, at single-storey height, the proposed dwelling would be at odds with the established development hierarchy, where primary dwellings are all two-storey, and ancillary structures are single-storey. Even if public views to the proposed dwelling were to be limited, in my judgement the proposal would introduce an awkward and unattractive form of development on a constrained plot that would fail to complement its surroundings.

7. The effect of the proposal would also be to consolidate built development into the long, linear garden plots that extend from Springfield Road towards the open landscape within the 'green wedge' beyond. While the appeal site itself falls just outside the 'green wedge' boundary, the red brick and slate roofs of the Riverside terraced houses are visible from it. Moreover, the existing gardens play an important role in defining the urban edge of the settlement. Regardless of whether, under some policy circumstances, development may be priorities in residential gardens, development in this location would harmfully extend the line of dwellings into the countryside, contributing to a harmful erosion of the settlement edge.

8. I conclude therefore that the proposal would cause significant harm to the character and appearance of the area. The scheme would consequently fail to accord with Policy D7, CP8, SB1 of the Site Allocations and Development Management Policies, adopted December 2016 (SADMP) and Policy DM1 of the Adopted Core Strategy 2011 – 28 (the Core Strategy), insofar as they seek to ensure development does not harm the setting of towns, is appropriate in terms of scale, siting and design, protects townscape character, reflects the site and its context, and that the appearance and character of the settlement, or street scene would not be unacceptably harmed, as well as provide a compact form to settlements, and preventing sprawl and sporadic development.

Living conditions

9. It has been suggested that the setting of the proposed dwelling, situated south of No 58 Springfield Road, would result in a loss of light, thus having an adverse impact on the living conditions of its occupiers. It would step down in increments and be partially screened by the hedge boundary and mature trees that currently populate part of the neighbouring garden. Given the scale of the proposed dwelling, I do not consider it would result in any harmful loss of light or overshadowing within neighbouring gardens.

10. The Council's reason for refusal also raises concern regarding overlooking and privacy, although the Officer's Report goes on to state that this would not be

an issue. I concur with the view that the high, dense hedgerow boundaries and sloping topography would provide a substantial level of screening between the

proposed development and neighbouring gardens. The proposed fenestration

and internal layout suggest to me that a future occupant would utilise proposed

exterior spaces to the east, facing towards the mill stream, or in the recessed courtyard, facing towards the garden of No 58. Both of these areas would provide sufficient distance from neighbouring properties and the majority of their gardens to ensure there would be no harmful overlooking or loss of privacy.

11. There is little appraisal in the body of the report to support their claim that the development would not provide an adequate residential environment for future occupiers. The proposed bungalow would be long and narrow, with high level windows and close boundary screening providing very little outlook on the main north and south elevations. However, the recessed courtyard space would off- set this to some degree, and the main living space would look out onto the garden and wider open landscape to the east. While small, the overall space proposed would be sufficiently well lit and laid out, with enough outdoor space to provide some meaningful function. The development would therefore provide an acceptable standard of accommodation overall.

12. I conclude therefore, that the proposed development would not result in harm to the living conditions of neighbouring occupiers and would provide satisfactory accommodation for its occupants. The development would therefore comply with Policy DM1 and SP1 of the Core Strategy insofar as they seek to ensure amenity of any users, and that individual dwellings or residential areas will not be unacceptably harmed.

Highway safety

13. Springfield Road is narrow, with parking restricted along one side by double- yellow lines. At the time of my visit (13:30), it was heavily parked along its other length. The access track to the appeal site is also extremely narrow and turns tightly as it rounds the corner along Riverside. While on private land, I saw on my site visit that the boundary walls of both 60 and 62 Springfield Road are relatively low. From my observations during my site visit, it was apparent that the nature of the roads in the vicinity of the appeal induces cautious driving behaviour.

14. I accept that visibility out onto Springfield Road is limited, and could be further restricted if the front gardens were planted or the height of the walls increased. However, no substantive evidence, such as accident or traffic flow data, have been provided to suggest that the current situation has any adverse impact upon highway safety or efficiency in the area, or the extent to which one or two more vehicles using the access would compromise it. It has been suggested that the parking area to the proposed development is such that a vehicle would be unable to turn and exit the site in a forward gear. However, no substantive evidence has been provided to support this assertion. While I appreciate that the access track is extremely narrow, it seems reasonable that the proposed parking area would provide enough space for a vehicle to manoeuvre so as to enable egress onto Springfield Road in a forward gear.

15. Taking the above matters into consideration, I conclude that the proposal would not have an adverse impact on the safety of users or the efficient operation of the highway network in the vicinity of the appeal site. It would not conflict, therefore, with Policy DM1 of the Core Strategy insofar as it seeks to ensure additional road traffic would not lead to overloading of access roads or road safety problems.

Planning balance

16. The provision of one additional dwelling, even where the Council can demonstrate a 5-year supply of housing land, would represent a clear benefit. There would also be economic benefits arising from employment during construction, and the supply of materials, and in future residents feeding into the local economy. The proposal would also have a social benefit associated with use of nearby services and facilities within the settlement, which could be accessed easily by means other than by private car. Given the size of the proposed dwelling, I attach moderate weight to these benefits. A lack of harm in terms of the historic environment, flood risk or biodiversity are all neutral factors; while not counting against the proposed development, nor do they weigh in its favour.

17. In seeking to bring forward housing development in a sustainable location, the proposal accords with the general thrust of Policy SP1. However, in terms of its more detailed effects, the proposal would be in conflict with the development plan policies that relate to character and appearance and the benefits of the scheme would not be sufficient to outweigh the adverse effects. The scheme fails to conform to the core principles of the Framework, which seek to secure high quality design that takes account of the character of different areas. The environmental dimension of sustainable development would therefore not be achieved and the proposal would not be sustainable development. On balance, I conclude that the proposal would fail to accord with the development plan and the Framework taken as a whole.

Other matters

18. I do not know the circumstances that led to planning permission being granted at no. 1a Riverside, as cited by the appellant. In any event, I have determined the appeal on the basis of the evidence before me, and the specific circumstances of the site.

Conclusion

19. I have found that the proposal would be harmful to the character and appearance of the area. Although there are other factors that count in favour of the proposal, these have not been sufficient to outweigh the harm identified. A lack of harm in relation to the second and third main issues does not alter the harm concluded for the first. For the reasons given above, and in consideration of all other matters raised, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR

Costs Decision

Site visit made on 31 January 2017

by H Porter BA(Hons) PGDip IHBC

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

Decision date: 27 February 2017

Costs application in relation to Appeal Ref: APP/D3315/W/16/3160923 Land to rear of 60 Springfield Road, Wellington, Somerset TA21 8LG

- 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 Mrs E Marrs for a partial award of costs against Taunton Deane Borough Council.
- The appeal was against the refusal of planning permission for the erection of a dwelling.

Decision

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

Reasons

2. Paragraph 030 of the Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities include failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by any objective analysis.

3. The applicant contends that the Council behaved unreasonably in that it failed to substantiate the objection to the proposed development on the grounds of harm to living conditions and highway safety.

4. The Council's reason for refusing planning permission, as set out in its Refusal Notice, consists of three distinct elements: development outside defined settlement limits; overdevelopment or a restricted backland site and impacts on living conditions; site access and impacts on the public highway. Reading the Council Officer's report, however, it is clear that reason for refusal 2, is in fact dealing with two separate issues: impact on the character and appearance of the area and on living conditions. In my judgement, reason for refusal 2 lacks clarity and fails to separate distinct issues; it is therefore imprecise and unspecific.

5. The Council Officer's report clearly substantiates their objections in relation to the impact of the proposed development on the character and appearance of the area. Policy D7, which they refer to in their costs rebuttal as supporting their reason for refusal 2 is, in my mind, relevant to the issue of character and

appearance and not to living conditions. The Council's rebuttal goes no further in providing any substance to the issue, which underpins the second part of the reason for refusal 2. In fact, the Council Officer's report states that 'overlooking would not be an issue', going on to conclude there could be an impact on light, even though 'the proposed dwelling is only single-storey'. No further assessment is given to substantiate the assertion that the proposal would not provide a 'proper residential environment for future occupiers'. Taking all of this into account, I can see no reasonable justification for the Council's objection in regards to the potential impact of the proposed development on living conditions. I therefore consider that the Council has behaved unreasonably in this respect.

6. The third reason for refusal relates to highway safety. While I note the appellant's point that the Council Officer's report wrongly refers to the impact on 'public highways', this does not negate in itself concern about highway safety. The Council Officer's observations on site, as well as third party representations, are reasonable and relate to Policy DM1 of the Core Strategy. Although I concluded there would be no harm to highway safety from the proposal, I did have to consider the matter carefully, and therefore the issue was one where a balanced judgement had to be made. The Council's reason for refusal 3 was therefore not without any substance and they have not behaved unreasonably through pursuing an objection on the grounds of highway safety.

Conclusion

7. I consider therefore that the Council have failed to provide evidence to substantiate fully their reasons for refusal 2 insofar as it relates to living conditions. I have found, however, that the Council has not behaved unreasonably in relation to highway safety, or on the grounds of harm to the character and appearance of the area. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the second part of the Council's reason for refusal 2, is justified.

Costs Order

8. In exercise of the powers under Section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 (as amended), and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Taunton Deane Borough Council shall pay Mrs E Marrs the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second part of the Council's reason for refusal 2.

9. The applicant is now invited to submit to the Taunton Dean Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

H Porter

INSPECTOR

The Planning Inspectorate

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Direct Line: 0303 444
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e-mail: environment.appeals@pins.gsi.gov.uk

Christopher Horan
Taunton Deane Borough Council The Deane House
Belvedere
Road Taunton
Somerset TAI 1HE

Your Ref: NC/T/2016/960
Our Ref: APP/HGW/16/416
Date: 23 February 2017

Dear Sir/Madam

.ENVIRONMENT ACT 1995 - SECTION 97
THE HEDGEROW REGULATIONS 1997

Please find enclosed a copy of the Inspector's decision letter, dated, 23 February 2017. Should you have any queries in respect of the decision, please send them to:

Customer Quality Unit
The Planning
Inspectorate Room 4 D
Hawk Wing Temple Quay
House
2 The
Square
Temple
Quay Bristol
BS1 6PN

Tel: 0303 444 5781

Or visit:

https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints- procedure

Yours sincerely

elf

Environment Appeals Team

Enc.

The Planning Inspectorate

Appeal Decision

Site visit made on 30 January 2017

by Heidi Cruickshank BSc{Hons), MSc, MIPROW

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 23 February 2017

Appeal Ref: APP/HGW/16/416
Orchard Farm, Hillcommon, Taunton, Somerset, TA4 IOW

- The appeal is made under Regulation 9 of the Hedgerows Regulations 1997, enacted under section 97 of the Environment Act 1995, against a Hedgerow Replacement Notice.
- The appeal is made by Mr D Mitchell against Taunton Deane Borough Council.
- The Hedgerow Replacement Notice, E/0042/48/15, is dated 12 August 2016 and indicates that it appears to the Council that a hedgerow has been removed in contravention of Regulation 5(1) of the Hedgerow Regulations 1997.
- The Hedgerow Replacement Notice requires the planting of a new hedgerow of approximately 92 metres in length in the location indicated by the green line on the plans attached to the Notice, in. accordance with the planting specification set out within the Notice.

Decision

1. Idirect that the Hedgerow Replacement Notice ("HRN") be modified as follows:

   - in relation to the *'Time for compliance'* replace *"The period during which the works must be carried out is 1st November 2016 to 30th November 2016."* with *"The period during which the works must be carried out is 1st March 2017 to 31st March 2017."*

2. Subject to this modification Idismiss the appeal and uphold the HRN.

Preliminary matters

3. · An appeal against a Council decision under this legislation should be made to The Planning Inspectorate within 28 days of the receipt of the decision. The HRN issued by Taunton Deane Borough Council ("theCouncil") was authorised and signed on 12 August 2016 but was not served on the appellant until 5 September. The appeal received by The Planning Inspectorate on 26 September was, therefore within the required time period.

Background

4. In March 2016 the Council received a complaint that the hedge in question was being removed from the land. Having looked into the matter the Council's Planning Committee meeting of 13 July 2016 decided to issue the HRN.

Grounds of Appeal

5. The HRN requires the replacement of a hedge of 92 metres in length, with a· mix of seven different plant species. The appellant indicated that the hedge removed in 2016 was only 63 metres in length as 29 metres had been removed during the development of a housing estate lying to the east of the hedge line. He also said that the removed hedge was only a single line of hawthorn,

planted by the family in the 1950s, not a hedge with a bank or ditches. He therefore requested that the HRN be modified to require only a single line of hawthorn of 63 metres length.

6. The appellant queried reliance on the Wellington Tithe Map 1842 as showing a hedge, rather than simply a boundary. He argued, by reference to Part II of Schedule 1to The Hedgerows Regulations 1997 ("the Regulations")\ that this was not an important hedge.

Main Issue

7. The main issue is whether the HRN is appropriate.

Reasons

8. There has been some argument as to whether or not this hedge was "important" by reference to paragraph 4(b) of the Regulations, with the Council confusing matters by reference to *'criterion (S)(a)'* of Part II of Schedule 1to the Regulations. However, the HRN clearly states that it was served under Regulation 8(1) of the Regulations because it appeared that the hedgerow was removed in contravention of Regulation 5(1).

9. Regulation 5(1) sets out that the removal of a hedge to which the. Regulations apply is prohibited except where an application to remove it has been received and approved by the Council. As the hedgerow was growing on land used for agriculture, Regulation 3(1) sets out that the Regulations apply to this hedge. There is no argument that an application to remove it was made. The power to require replanting applies whether the hedgerow that has been removed was important or not.

10. The appellant indicated that part of the hedge was removed at an earlier date but Ido not consider that there to be a time limit on the requirement for replacement of a hedge. Regulation 8(1) indicates that notice is to be served on the owner unless the hedgerow has been removed by or on behalf of a relevant utility operator, in which case notice should be served on the operator. Although the appellant has referred to removal by contractors, there is no information to show that this was by or on behalf of a utility operator. It appears that the HRN has been served on the correct party.

11. The HRN allows for a five metre gap at the south-western end of the hedge, adjacent to the old buildings in this area[2], providing access between the fields. Iam satisfied that this is reasonable and that the approximately 92 metre length of hedge should be replanted on the line indicated in by the plans attached to the HRN.

12. In relation to the desire to plant a single line of hawthorn, rather than the double staggered mix of species set out in the HRN, the Regulations do not specify that there should be a 'like for like' replacement. In cases such as this, where the hedgerow has been removed, it is difficult to ascertain the original composition of the hedge.

13. Itake account that by virtue of Regulation 8(4) the replacement hedge will be an "important" hedgerow for a period of 30 years beginning with the

date of substantial completion of the planting; the importance of hedges in biodiversity

[1] SI 1997 No. 1160
[2] See Plan 2 attached to the HRN

terms; and, the view of the Council that the required species mix reflects what will be found in other local hedges. The view of the Council that the cost of the proposed replacement would be less than planting the same length solely with hawthorn has not been evidenced. Taking all the relevant matters into account, Iam satisfied that the HRN is appropriate in terms of the mixture of species set out in the notice.

Other matters

14. As set out by *A Guide to the Law and Good Practice*[3] in deciding whether to issue a HRN the Council should consider whetherthis is reasonable, taking account of the particular circumstances of the case and any representations received. The appellant feels that his communications were not taken into account by the Council. However, Ido not consider that matters relating to the procedures followed prior to the issuing of the HRN are relevant to my decision.

Conclusion

15. Having regard to these and all other matters raised in the written representations, Iconclude that the appeal should be dismissed. However, the HRN requires the works to be carried out in the period 1 - 30 November 2016, which cannot be met due to .the appeal period. Ihave modified the planting period accordingly, as set out in the decision, above.

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Inspector

[3] Department of the Environment, Transport and the. Regions, 1997. ISBN: 185112 037 8

The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 02 March 2017

Appeal Ref: APP/D3315/W/16/3160279

Steel framed former lambing/shelter barn, Yard Farm, Combe Florey, Taunton, Somerset TA4 3JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Mr Gerald Barons against the decision of Taunton Deane Borough Council.
- The application Ref 11/16/0006/CQ, dated 14 June 2016, was refused by notice dated 31 August 2016.
- The development proposed is prior approval for proposed change of use from agricultural building to dwelling house (Class C3) and associated operational development of former lambing barn.

Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal relates to an application made under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

3. The application form did not explicitly set out what was applied for; rather this was implicit from the nature of the application form and drawings submitted with the application. The Council set out the procedure and a description and I have used this as it clearly sets out that applied for.

4. During the processing of the application the appellant submitted a drawing setting out the proposed floor plan. I have used this to inform my decision.

Main Issue

5. The main issue is whether the change of use would be undesirable in that it would not give rise to satisfactory living conditions for the proposed occupiers in terms of noise and disturbance.

Reasons

6. The appeal site consists of the area of a metal framed barn and the southeastern

part of a larger timber framed pole barn, and a small open area to the southwest. Outside the appeal site the remaining part of the larger

building provides part of the access to a building and associated hardstanding a short way to the west which is described on the drawings as a "vehicle store/garage". This building was constructed pursuant to a prior approval as an agricultural building.

7. Schedule 2, Part 3, Paragraph Q.2 of the GPDO makes it a condition that applicants must apply to the local planning authority for a determination as to whether prior approval is required of a number of matters. Included within these is "whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a use" as a dwelling.

8. The national Planning Practice Guidance indicates[1] "undesirable" reflects that the location or siting would be "harmful or objectionable". This is expanded upon where it states that the location of the building whose use would change may be undesirable if it is adjacent to other uses such as intensive poultry farming buildings, silage storage or buildings with dangerous machines or chemicals. I do not consider this to be an exhaustive list but rather it makes clear that agricultural activity can be undesirable by reason of, amongst other things, noise. Conditions can be imposed which are reasonably related to the subject matter of the prior approval[2] to provide mitigation.

9. Paragraph W.(10)(b) of Schedule 2, Part 3 of the GPDO requires that regard must be had to the National Planning Policy Framework (the Framework) as far as relevant to the subject matter of the prior approval. One of the core planning principles in paragraph 17 of the Framework is that that decision makers should always seek a good standard of amenity for future occupiers of buildings. Paragraphs 109 and 123 of the Framework both refer to the impact that noise can have on residential amenity.

10. There is a dispute between the parties as to the degree of use of the access way to the vehicle store/garage, and clearly this will depend on the agricultural activities taking place on the holding and is likely to vary over time and season. Although evidence submitted by the appellant indicates that vehicle movements are limited this may change; what should be considered is a realistic expectation of activity to/from that area. It is also the case that the dwelling should be considered as a dwelling independent of the agricultural holding, even though it is indicated that the occupier would be employed on the holding, as there is nothing which could so restrict it and a condition to this effect would not be reasonable within the terms of a prior approval.

11. The building to the west and its hardstanding would allow a significant number of large agricultural vehicles to be parked, and they would travel immediately adjacent to the proposed buildings. The nature of agricultural operations is that seasonally they often take place in the early morning and can continue late into the evening at anti-social hours. Vehicles in such close proximity have the potential to create significant noise and disturbance, particularly at anti- social hours and could disturb sleep.

12. The proposed dwelling layout has bedrooms located away from the access way, which would minimise the effect of noise and disturbance. However, this would result in the rooms being very close to the bank and no windows are shown.

[1] Paragraph 13-109-20150305
[2] Schedule 2, Part 3, Paragraph W(13) of the GPDO.

Because of the close proximity of the access way to the dwelling it is not possible to be sure that it would be possible to achieve a satisfactory degree of sound insulation to the internal spaces by way of a condition within the structure so that the conversion would still fall within the relevant criteria set out in the GPDO.

13. That being the case, the proposed location would be undesirable for use as a dwelling as vehicles travelling past the appeal property would have the potential to create significant noise resulting in unacceptable living conditions for the occupiers of the proposed dwelling. It would therefore be contrary to paragraph 17, 109 and 123 of the Framework as set out above.

Conclusion

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

RJ Jackson

Appeal Decision

Site visit made on 24 January 2017

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 7 March 2017

Appeal Ref: APP/D3315/W/16/3161791

Millgrove House, Mill Lane, Staplegrove, Taunton TA2 6PX

- 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 Mrs Melanie Alford against the decision of Taunton Deane Borough Council.
- The application Ref 34/16/0010, dated 1 April 2016, was refused by notice dated 26 May 2016.
- The development proposed is the erection of 2 no. two storey detached dwellings with double garages.

Decision

1. The appeal is dismissed.

Procedural matter

2. The application was made in outline with all matters reserved for subsequent approval.

Main Issues

3. The main issues are:

   i) the effect of the proposal on the character and appearance of the area, and

   ii) the effect on the setting of Staplegrove Lodge, a grade II listed building.

Reasons

4. The appeal site forms a field to the rear of Millgrove House, which is one of a small cluster of dwellings loosely strung along Mill Lane, which ends in a private road leading to a large complex of farm buildings. The site lies outside of the defined settlement limits for Taunton. The small group of dwellings along Mill Lane is of a mainly linear pattern; there are no dwellings set back from the road as far as those proposed here. The position of these dwellings and their juxtaposition to open fields gives the group a strong rural character.

5. Policy CP8 of the Taunton Deane Adopted Core Strategy 2011-2028 (CS) deals with the environment and provides that, amongst other things, unallocated greenfield land outside of settlement boundaries will be protected and where possible enhanced. It also says that development within such areas will be strictly controlled in order to preserve the environmental assets and open character of the area, but provides that where development outside such

boundaries takes place, it must comply with other criteria, the most relevant of which is that it is in compliance with other national and local policies, and that it protects, conserves or enhances landscape and townscape character. CS Policy DM2 sets out uses which may be permitted in the open countryside, none of which include open market residential dwellings.

6. Since the refusal of the application, the Taunton Sites Allocation and Development Management Plan (SADMP) has been adopted. Policy SB1 deals with settlement boundaries and says that proposals outside of identified boundaries will be treated as being within open countryside and assessed against Core Strategy policies CP1, CP8 and DM2 other than in circumstances which do not apply here. Accordingly the proposal would conflict with the above-mentioned policies.

7. SADMP Policy TAU2: Staplegrove identifies a site for a new sustainable neighbourhood. The boundary of that site as shown in the concept plan supporting the policy wraps around this part of Mill Lane, incorporating land on three sides of the site. The appellant argues that this designation, and the change around the site that will be likely to occur, are material considerations of sufficient substance to outweigh the conflict with the development plan. In recommending the appeal proposal for approval, Council officers took the same view.

8. In its appeal submissions the Council has submitted a copy of a masterplan for the urban extension which shows the land on either side of Mill Lane being left undeveloped, with planting, open space and a large pond being indicated on the land immediately to the south of the appeal site stretching to the A358 Staplegrove Road. The appellant says that this masterplan has no status, and the Council has not explained clearly what planning purpose it serves or what weight might be attached to it. However, a neighbour has indicated that the masterplan was adopted by the Council in December 2015, and this has not been contradicted by the appellant. Policy TAU2 requires a masterplan and phasing strategy with associated infrastructure to be prepared by the developers in conjunction with the Borough Council and other stakeholders. Accordingly, although the masterplan may not have the force of a development plan document, it nevertheless carries some weight.

9. Moreover, the neighbour informs me that the masterplan has been included in two outline planning applications for the Staplegrove urban extension[1] and an extract has been provided to show that it is part of a design and access statement. Although these applications have not yet been determined, the fact that developers have carried forward the masterplan in their proposals adds to the weight that the masterplan carries. Accordingly, despite the inclusion of adjoining land as part of the designated urban extension, the evidence suggests that there is a realistic likelihood that the area surrounding the appeal site will remain undeveloped and that the rural character of the adjoining fields will be maintained.

10. The proposal is in outline, but the illustrative plan shows two large dwellings and garages sited between the walled garden of Staplegrove Lodge and the rear garden of Millgrove House. The appellant points out that layout is a reserved matter and it would be possible to site two houses closer to the parking area if necessary. However, as two storey houses with garages, they

[1] Refs: 34/16/0007 & 34/16/0014

would constitute a noticeable consolidation of the sparse residential development in this cluster, and would be visible from Mill Lane and over the garden wall of Staplegrove Lodge when viewed from the A358. The *Landscape Character Assessment of Taunton's Rural-Urban Fringe Sensitivity and Capacity study 2005* found that the Back Stream flood plain, of which the appeal site forms part, has a high landscape sensitivity overall. The site forms part of the open agricultural land, rising from the stream, fringed by woodland to the west and by a backdrop of trees and hills in the distance.

11. Although the site itself is some distance from the A358, it complements the field to the foreground in views from that road. To my mind, additional houses, even if partly screened by the garden wall, would nevertheless intrude into views from the A358 and erode the semi-rural character of the area.

12. I therefore conclude on this issue that the proposal would result in material harm to the character and appearance of the area and would conflict with the policies to which I have referred.

The setting of Staplegrove Lodge

13. Staplegrove Lodge is a Grade II listed building and comprises a large detached house set in spacious grounds, which include a walled garden on the western side. The curved brick wall which surrounds the westernmost part of the garden varies in height, but reaches 3m or so in parts, and, like the house itself, it can be seen across an open field from the A358 Staplegrove Road.

14. Lodge Cottage and Lodge Farm lie between the listed building and Millgrove House, and thus the proposal would lie within a similar context. However, the appeal site projects well to the west of the walled garden, and houses would need to be sensitively sited and designed so as not to detract from the appearance of the garden wall, which I regard as being important to the setting of the listed building. However, looking from the A358 to the south, Millgrove House can already be seen over the top of the garden wall, and so houses sited more or less in line between Millgrove House and the wall would make little material difference to this existing position or to the setting of the listed building.

15. I therefore conclude on the second main issue that the proposal would preserve the setting of the listed building, and would not conflict with CS Policy CP8, which includes the protection of heritage assets as one of its criteria.

Other matters

16. The appellant argues that the proposal amounts to sustainable development, and that notwithstanding the conflict with the development plan, that the presumption in favour of sustainable development should prevail in this case. However, that presumption does not apply where there is a conflict with an up to date development plan, as in this case.

17. The Environment Agency has advised in connection with one of the outline applications for the urban extension that the Back Stream, which runs adjacent the rear boundary of the site, has been known to be used by otters. There is no suggestion that the appeal site is a habitat for otters; the boundary with the stream is well-delineated by a post and rail fence to which both barbed wire and a wire mesh have been added.

18. Although neighbours refer to the existence of evidence of other protected species on the appeal site, I have not been provided with it. Given these circumstances, and the existing use as a paddock, where horses and people will be present in varying degrees, there is insufficient evidence to show that there is a likelihood of a protected species being present or affected by the proposal.

19. A neighbour has raised concerns about the exacerbation of flood risk. A small part of the lower, western edge of the site lies within Flood Zone 2, but the remainder of the site, where the houses are likely to be sited is in Flood Zone 1. There was no objection to the proposal from the Council's technical consultees, and in view of the large size of the site, I consider that there is ample scope to ensure that runoff could be attenuated to greenfield rates, and thus not add materially to any existing flood risk.

20. I note that there have been problems in the past with noise associated with the abattoir to the north of the site, but there is insufficient evidence for me to conclude that living conditions for occupiers of the proposed dwellings would be materially harmed. Similarly, the use of Millgrove House as a holiday let is not an inherently noisy use, and problems of loud parties can be addressed, if necessary, under other legislation and should not preclude residential development. The reduced area available for parking may limit the attractiveness of Millgrove House as a holiday let for large groups, but is not a reason to prevent the proposal.

21. I have had regard to the other concerns expressed by neighbours, including highway safety, but these are insufficient to add to my reason for dismissing the appeal.

Conclusion

22. For the reasons given above, I find that the proposal conflicts with the development plan as a whole, and that there are insufficient material considerations to outweigh that conflict. Accordingly the proposal must be dismissed.

JP Roberts

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 14 December 2016

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

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

Decision date: 20 March 2017

Appeal Ref: APP/D3315/X/16/3150659

Kedget Barton Farm, Churchstanton, Taunton, Somerset TA3 7RN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Tony Reynolds against the decision of Taunton Deane Borough Council.
- The application Ref 10/14/0034/LE, dated 24 October 2014, was refused by notice dated 18 February 2015.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the construction of a dwelling with unrestricted occupancy.

Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

2. An application for costs has been made by the appellant against Taunton Deane Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Although the description of the development for which an LDC is sought refers to the 'construction of a dwelling with unrestricted occupancy', the submissions relate to whether the dwelling was constructed and substantially completed in breach of Planning Permission Ref 10/2004/028 and for a period of time so as to be immune from enforcement action; it is thus not just a question of whether the occupancy condition imposed therein has any effect. It is on this basis that the LDC was considered by the Council and upon which I determine the appeal.

Preliminary Matters

4. Planning permission was granted for the construction of a dwelling on 25 January 2005 under Planning Permission Ref 10/2004/028 ("the 2005 permission"). Condition 2 of that permission 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 in forestry or a

dependent of such a person residing with him or her or a widow or widower of such a person.'

5. A subsequent application was made under Section 73 of the Act ("s73 application") for the variation of Condition 2 of Planning Permission Ref 10/04/028 to allow the applicant to occupy the dwelling in association with the proposed use of the land and associated buildings for agricultural and equine business[1]. Permission was granted in September 2012 subject to Condition 1 which reads:

   '*The occupation of the dwelling shall be limited to a person running the equine business on the site or to someone solely or mainly working, or last working in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependent*'.

6. The appellant states that the construction of the dwelling commenced in 2005/06 with completion in 2007/08, without complying with the pre- commencement conditions attached to the 2005 permission. He therefore considers that, as the conditions were not complied with, the development was not lawfully implemented.

7. Furthermore, I am told that the dwelling and associated driveway are not in the same location as that approved and that there are differences in the design and detail of the dwelling as constructed. No subsequent amendments have been approved by the Council. Consequently, it is the appellant's view that significant differences exist between the approved and the 'as built' scheme, such that the development was unlawful at the time it was substantially completed.

8. The appellant draws the conclusion that, as the dwelling was completed prior to January 2008, more than four years before the submission of the LDC, it is beyond the time limit for the Council to take enforcement action and it is not subject to any restrictive occupancy condition.

9. The Council maintains that although the as-built dwelling differs in its location and detailing to that shown on the approved plans, the differences are not material and the 'substantial usability' of the property is, and has been, in the manner permitted by the 2005 permission.

Main Issue

10. The main issue is whether the appeal dwelling was constructed and substantially completed in breach of the planning permission granted under Planning Permission Ref 10/2004/028, for such a period as to be immune from enforcement action.

Reasons

11. In granting planning permission for the erection of an agricultural dwelling under the 2005 permission, the Council imposed two pre-commencement conditions. Condition 3 reads:

    '*Before the commencement of any works hereby permitted, details or samples of the materials to be used for all the external surfaces of the building(s) shall be submitted to and be approved in writing by the local planning authority, and*

[1] Permission Ref 10/12/0023 refers.

no other materials shall be used without the written consent of the local planning authority.'

12. Condition 4 reads:

'(i) Notwithstanding the proposed new hedges, before any part of the permitted development is commenced, a landscaping scheme, which shall include details of the species, siting and numbers to be planted, shall be submitted to and approved in writing by the local planning authority…..'

13. The appellant states that the construction of the dwelling commenced at some time between January 2005 and June 2006 with completion between September 2007 and January 2008. I have had sight of handwritten notes on a letter from the Council to the appellant dated 4 March 2005; the first note dated 7 March 2005 confirms that the appellant contacted the Council and advised that no works had started whilst the second note dated 21 September 2005 states that work had commenced on the footings. I have also been provided with a subsequent letter of 19 June 2006 from the Council to the appellant stating its understanding that work has commenced. The appellant's Google Earth image from June 2006 shows the development underway whilst a second image from September 2007 shows the dwelling in situ with the roof and ridge tiles complete. An extract from the Valuation Office's Online records show that Council Tax was applied to the dwelling with effect from 1 January 2008. In the absence of any substantive evidence to the contrary, it is reasonable to conclude that works commenced in or around September 2005 and were substantially completed by January 2008 at the latest.

14. The only submissions in relation to external finishes were included in a letter from the appellant to the Council dated 14 March 2006[2]. In its response dated 15 March 2006, the Council approved the external finish in relation to the walls and 'discharged' part of Condition 3, but did not accept the roof material, instead insisting on the use of natural slate.

15. In the same letter, the appellant was also advised that the Council was awaiting details of landscaping (pursuant to Condition 4). As I understand it, no further submissions were made by the appellant in respect of this pre- commencement condition.

16. The Council wrote to the appellant again in June 2006, advising that it was aware that work had commenced but that it held no record of Conditions 3 (External Finishes) and Condition 4 (Landscaping) having been complied with, despite its agreement, in part, of the external finishes in March 2006. The Council also stated that these conditions should have been agreed before work commenced on site.

17. In a subsequent letter dated 28 July 2006, the Council approved the use of 'Redland 50 Concrete double roman roofing tiles', despite its earlier insistence that slate should be used. I do not know what brought about this change.

18. Notwithstanding the agreed details, at the time of my visit, I observed that the majority of the external walls are rendered and the roof is covered in slate, which was not agreed by the Council in its letter of 15 March 2006 or its subsequent letter of 28 July 2006.

[2] The letter proposes the use of double Roman tile, colour Farmhouse Red by Redland and brick, colour Cassandra

by Terka, albeit does not specify the application and extent of their use.

19. I am also not certain why the Council did not invite the submission of a s73 application to vary the conditions since it was aware that development had commenced but that the pre-commencement conditions had not been fully agreed. Neither did the materials being used in the construction of the dwelling match that which had been approved in part. To my knowledge, the Council took no enforcement action to rectify the breach of planning control that had occurred.

20. It is common ground between the parties that both conditions are true conditions precedent. Having regard to the principles established by the judgement in *F.G Whitley & Sons v Secretary of State for Wales [1992]* and subsequent legal authorities, I agree that Condition 3 (External Finishes) goes to the heart of the permission insofar as the dwelling is located in an open countryside location and an Area of Outstanding Natural Beauty (AONB) and its external appearance would inevitably affect the character and appearance of the area. It is thus not a minor aspect associated with the development that could reasonably be agreed after development has commenced.

21. Turning to Condition 4 (Landscaping), however, I consider that the requirements of this condition could conceivably be addressed post- commencement of development. Be that as it may, for the reasons I have given, Condition 3 is true conditions precedent. Given the failure to comply with conditions precedent, I am of the view that the whole development is unlawful.

22. I note the Council's reference to the case of *Hammerton v London Underground Ltd [2002]* in which it was established that even if the commencement of development is potentially unlawful due to a failure to comply with conditions precedent, the development in question will not be unlawful if enforcement action against the development as a whole cannot be taken either because to do so would be unreasonable or because the development has become lawful under the 4-year rule.

23. However, I do not consider that the Council would have acted unreasonably if it had taken enforcement action in respect of matters associated with the appearance of the dwelling and the resultant effect on the character and appearance of the AONB. In any event, there are other distinct differences between the *Hammerton* case and the appeal before me, not least as the latter also involves the question of whether the dwelling was completed in accordance with the approved plans.

24. That brings me to the question of the significance of the differences between the as-built dwelling and that shown on the approved plans for the 2005 permission. As I understand it, the dwelling and driveway as constructed are not in the position shown on the approved drawings; in my opinion, the difference is considerable and not immaterial. There are also differences in terms of the design and detailing of the dwelling; this includes the length of the dwelling, the size and detailing of the fenestration, finishes of the dormer, a larger chimney and the omission of another and alternative positioning of roof lights.

25. *Sage v Secretary of State for the Environment, Transport and the Regions and Others [2003]* established that if a building operation is not carried out in accordance with the permission, the whole operation is unlawful. The

judgement in *Barnett v Secretary of State for Communities and Local Government [2008]* subsequently established that a planning permission is inherently linked to the approved drawings. Taking these factors into account, and notwithstanding that there was no specific condition on the 2005 permission requiring the development to be carried out in accordance with the approved plans, cumulatively the changes have resulted in a building that is materially different to that shown on the approved plans which form part of the planning permission. I do not share the Council's view that the changes are immaterial in the sense of *Lever (Finance) Ltd v Westminster City Council [1971].*

26. Put another way, in applying the principles established in *Commercial Land Ltd / Imperial Resources SA v Secretary of State for Transport Local Government and the Regions [2003]* the differences between the approved plans and the development that was carried out is fatal to the capability of the operations to be effective in commencing the development.

27. Having regard to *Copeland Borough Council v Secretary of State for the Environment and Ross [1976]*, as the development was not carried out in accordance with the permission as a whole, the whole operation was carried out without the benefit of planning permission. It therefore constituted a breach of planning control.

28. Given this position, it follows that as the 2005 planning permission was not implemented, the appellant cannot be bound by the conditions on the permission. Of particular relevance here is Condition 2 which restricts occupancy to a person employed or last employed in agriculture or forestry.

29. Whilst I acknowledge that the Council determined a subsequent s73 application to extend the occupation restriction to include '…a person running the equine business on the site', it has no effect since the 2005 permission was not implemented.

30. Under s171B(2) of the 1990 Act (as amended), no enforcement action may be taken at the end of the period of four years beginning with the date of a breach of planning control.

31. There is no evidence before me to contradict the appellant's claim that the construction of the dwelling was completed, at the latest, in January 2008. During this period, the Council did not pursue enforcement action. Consequently, the dwelling has been substantially complete for a continuous period in excess of 4 years prior to the date of the LDC application, so as to be immune from enforcement action.

32. The Council has cited the case of *Aerlink Leisure Limited v First Secretary of State and another [2004]* insofar as the property has been used in the manner permitted by the planning permission; that is, it was used as an agricultural workers dwelling until a change of use application in 2012 permitted the development to be occupied for agriculture and equine purposes.

33. However, the Aerlink case relates to works which were partially completed and whether or not those works represented implementation of a planning permission that would allow works to continue. The case before me differs in that the building works were completed more than 4 years from the date of the LDC application and, for the reasons that I have given, were not in accordance

with the planning permission representing a breach of planning control. Whether or not the dwelling was used in accordance with the agricultural occupancy condition is immaterial since the conditions on a planning permission that has not been lawfully implemented cannot have effect.

34. In reaching my decision I have had regard to the other case law referred to by both parties, but to which I have not specifically referred. However, they do not lead me to any other conclusions.

Conclusion

35. I conclude that, as a matter of fact and degree and on the basis of probabilities, the dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028, for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action. It cannot therefore be bound by the conditions contained therein.

36. The Council's decision to refuse to grant a LDC was not well-founded. The appeal should succeed and I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended.

Melissa Hall

Inspector

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 October 2014 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028, for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action.

Signed

Melissa Hall

Inspector

Dated 20 March 2017:

First Schedule

The construction of the dwelling in breach of planning permission granted under Ref 10/2004/028.

Second Schedule

Kedget Barton Farm, Churchstanton, Taunton, Somerset TA3 7RN

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

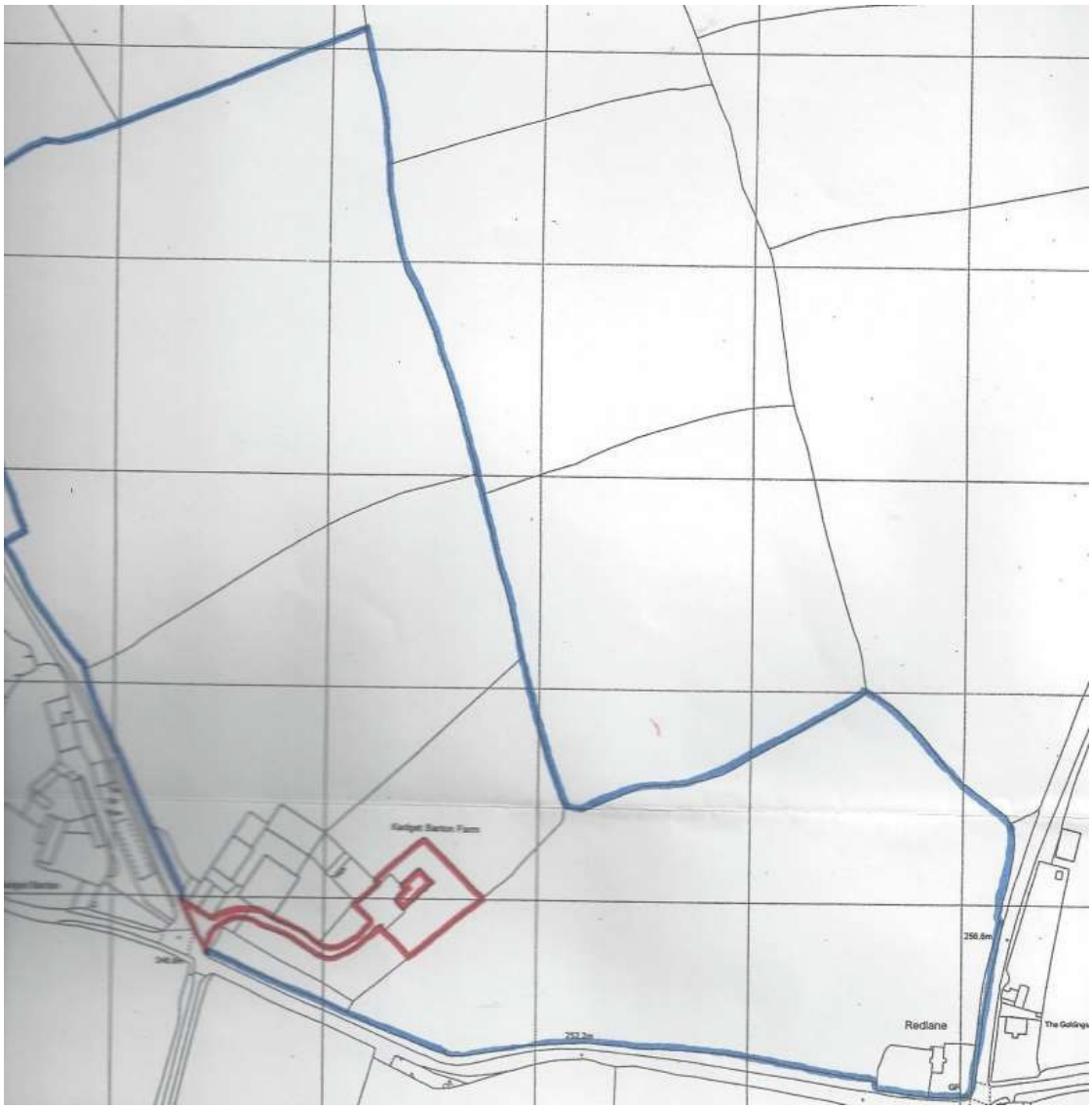
This is the plan referred to in the Lawful Development Certificate dated 20 March 2017 .

By Melissa Hall

Land at: Kedget Barton Farm, Churchstanton, Taunton, Somerset TA3 7RN

Reference: APP/D3315/X/16/3150659

Scale: NTS


Redlane

The Planning Inspectorate

Costs Decision

Site visit made on 14 December 2016

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

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

Decision date: 20 March 2017

Costs application in relation to Appeal Ref: APP/D3315/X/16/3150659 Kedget Barton Farm, Churchstanton, Taunton, Somerset TA3 7RN

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Tony Reynolds for a full award of costs against Taunton Deane Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development for the construction of a dwelling with unrestricted occupancy.

Decision

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

The submissions for the appellant

2. Local planning authorities are required to provide evidence to substantiate each reason for refusing to issue a lawful development certificate based on substantive legal precedent and principles.

3. The Authority failed to provide a complete, cogent and equitable justification for the reasons for refusal. The precedent cases cited by the Authority relate to cases where the approved developments were incomplete and other material circumstances differed from the appellant's case. The cases cited by the appellant have not been addressed by the Authority, nor has it sought to differentiate between these cases and that the subject of the appeal. It has simply dismissed the physical changes to the design and siting as being 'not material', without reference to any substantive or authoritative precedent to substantiate its case. Neither did it consider the cumulative effects of the changes. This represents unreasonable behaviour.

4. The Authority failed on a procedural basis for two reasons. It did not produce two relevant documents when the planning file was inspected and it therefore failed to maintain a complete planning file. Furthermore, the Authority lost the appellant's planning statement only to find it at a later date, albeit it resulted in additional professional work being undertaken on behalf of the appellant. Such actions are tantamount to maladministration which represents unreasonable behaviour.

The response by the Authority

5. The relevance of the case law cited by the Authority in the determination of the application for a lawful development certificate is fully explained in the analysis provided with the decision notice and in its Statement of Case. The principles set out therein are not restricted to the facts of those cases, but are of general

application. It is therefore considered that the reasons for refusal have been fully explained by reference to relevant case law and the facts of this particular case.

6. It is not disputed that the dwelling and access are in a different location to that shown on the approved plans. It is the materiality of those differences that is at issue. Similarly, each variation from the approved plans was considered and an explanation given as to why the change was not material. The analysis went on to consider whether the works taken as a whole have 'substantial useability' in the context of the approved development. Thus, the Authority has not acted unreasonably.

7. It is accepted that some correspondence was missing from the planning file albeit the letter was available to view on the website. It is also the case that the Authority temporarily mislaid the appellant's appeal statement. However, the statement was subsequently found and the appellant was not put to the expense of providing a second copy. Be that as it may, it is not clear how the absence of a letter from the planning file or the temporary mislaying of a document has resulted in the appellant incurring unnecessary or wasted expense.

Reasons

8. The National Planning Policy Framework ("the Framework") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

9. For the reasons given in my decision on the appeal, I have found against the Authority and concluded that the dwelling is likely to have been substantially completed in breach of the planning permission granted under Ref 10/2004/028 ("the 2005 permission"), for a period in excess of four years prior to the date of the LDC application and so as to be immune from enforcement action. I came to this conclusion based on the legal precedents before me and the particular circumstances of the case.

10. The Authority issued its decision refusing the application by reference to what it considered to be relevant case law whilst providing an analysis of the reasons for its decision. Whilst I have not been persuaded by the Authority's arguments, it nonetheless took a position on the law, which it was perfectly entitled to do. The matters at issue are based on fact and degree in each case and involve judgements which are, at times, finely balanced. In my view, it had grounds for pursuing the matter to appeal to defend its decision to withhold a lawful development certificate.

11. I understand the appellant's frustrations in respect of the missing correspondence from the planning file and the temporary mislaying of the submitted appeal statement. However, this did not result in the appeal coming into being or the appellant incurring any additional expense in the appeal process than he would otherwise have done.

12. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Framework, has not been demonstrated and that an award of costs is not warranted.

Melissa Hall

Inspector