

Appeal Decisions

Site: NORTH HEYWOOD FARM, STAWLEY, TA21 0HW

Proposal: PRIOR APPROVAL FOR PROPOSED CHANGE OF USE FROM AGRICULTURAL BUILDING TO DWELLING HOUSE (USE CLASS 3) AND ASSOCIATED BUILDING WORKS AT NORTH HEYWOOD FARM, STAWLEY
Application number: 35/15/0019

APPEAL AGAINST IMPOSITION OF CONDITIONS

Appeal decision: ALLOWED

Site: 58 SMITHY, BISHOPS HULL, TAUNTON, TA1 5DU

Proposal: ERECTION OF A DETACHED DWELLING TO THE REAR OF 58 SMITHY, BISHOPS HULL
Application number: 05/14/0047

Appeal decision: DISMISSED

Reasons For Refusal on Planning Application

The proposal results in a cramped form of development that is out of keeping with and detrimental to the character of the established layout of the terraced and semi-detached properties of the area; eroding the character by infilling a distinctive gap that forms part of the pattern of development within Smithy. The proposal therefore does not accord with Policy DM1(d) (General Requirements) of the Taunton Deane Core Strategy and relevant Sections within the National Planning Policy Framework.

The location of the site and cramped appearance close to the boundaries of the neighbouring properties creates an intrusive and overbearing feature that would affect the outlook and amenity of the neighbours. Furthermore, the proposed dwelling, by reason of its siting and close proximity to the neighbouring properties would cause an unacceptable loss of sunlight; overshadowing to the gardens of 57/58 Smithy, as the proposal is located to the South of these properties; and the first floor windows within the rear elevation, being only 6.2m to the rear boundary of the site, would overlook the gardens of neighbouring properties. The proposal therefore does not accord with Policy DM1(e) (General Requirements) of the Taunton Deane Core Strategy and relevant Sections within the National Planning Policy Framework.

Appeal Decision

Site visit made on 12 January 2016

by **Stephen Hawkins MA MRTPI**

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

Decision date: 4 February 2016

Appeal Ref: APP/D3315/W/15/3134513
58 Smithy, Bishops Hull, Taunton TA1 5DU

- 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 Joshua Barratt against the decision of Taunton Deane Borough Council.
 - The application Ref 05/14/0047, dated 20 September 2014, was refused by notice dated 20 March 2015.
 - The development proposed is erection of a dwellinghouse.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The effect of the proposed dwelling on the character and appearance of the area and its effect on the living conditions of adjoining residential properties, having regard to outlook, sunlight, overshadowing and privacy.

Reasons

Character and appearance

3. The Smithy is a small residential estate originally developed by a local authority, generally consisting of terraces or pairs of dwellings of similar appearance, set in regularly sized plots. Together with the generous spacing between the groups of dwellings and maturing planting, this gives the appeal site and its surroundings a cohesive, pleasantly spacious character and appearance.
 4. The small detached two-bedroom dwelling proposed would be sited in a comparatively modest plot, which lies at the rear of 57 and 58 The Smithy and runs parallel to the boundary of 56 The Smithy. The design and materials of the dwelling would be similar to that of surrounding properties. However, introducing built form onto the appeal site would significantly erode the current sense of space between the groups of dwellings in the street scene. The plot is relatively narrow and by occupying most of the width, the dwelling would appear quite 'cramped', in comparison with the more generous plots and spacious characteristics of local development. In my opinion, this would be harmful to the established character and appearance of the area.
-

5. The proposed dwelling would therefore fail to accord with Policy DM1 of the adopted Taunton Deane Core Strategy (CS), which at (d), requires that the appearance and character of the affected street scene should not be unacceptably harmed by the development. It would also fail to have sufficient regard to the National Planning Policy Framework (the Framework), which amongst other things, emphasises the importance of achieving high quality design and promoting or reinforcing local distinctiveness.

Living conditions

6. The expanse of the proposed dwelling's side wall would run parallel to the entire rear elevation of No 57 and would be immediately adjacent to its rear boundary. Nos 57 and 58 both have relatively short rear gardens. From the ground floor and first floor rear windows of habitable rooms in No 57, the dwelling would therefore be viewed as a dominant and oppressive feature. It would significantly reduce the existing aspect from rear facing windows and would create a strong sense of enclosure. This would seriously erode the degree of outlook currently enjoyed by the occupiers. The same would apply to some of the rear windows in No 58, as part of the side of the dwelling also runs parallel with their rear boundary. The modest brick outbuildings at the end of both gardens, would not significantly offset the effect that the dwelling would have in this respect.
7. Moreover, due to their south facing aspect and the proximity of the new dwelling to the rear boundary, Nos 57 and 58 and would also experience a very noticeable reduction in the degree of sunlight received as well as overshadowing of their rear gardens during substantial parts of the day. This would seriously reduce the occupiers' ability to use and enjoy their gardens.
8. The proposed dwelling would have two windows in its rear elevation at first floor level. One would serve a bathroom and it would be reasonable to expect that it would be obscure glazed. However, the other window would serve a bedroom. Given the limited depth of the rear garden proposed, this window would overlook the garden of No 58 as well as that of 59 The Smithy at close quarters. I did not find this comparable with any overlooking from windows in existing dwellings, including the first floor side window at No 56. In my view, the overlooking would unacceptably harm the privacy currently enjoyed by occupiers when using their gardens.
9. There would also be an unacceptable level of overlooking of the land at the rear of No 59 from the new dwelling's first floor rear window. It has been suggested that this land might be in communal use. However, it is completely surrounded by back gardens and its users are still likely to be associated with a dwelling. They would therefore have a reasonable expectation of privacy when using the land.
10. The harm caused by the loss of outlook, sunlight and privacy to the occupiers of adjoining residential properties together with the increased overshadowing, all of which would occur as a result of the proposed dwelling, would fail to accord with CS Policy DM1, which at (e) requires that the amenity of individual dwellings should not be adversely affected. It would also fail to have sufficient regard to the Framework, which amongst other things, seeks to ensure that a good standard of amenity is provided for all existing and future occupants of land and buildings.

Other matters

11. My attention has been drawn to the planning permission granted by the Council for a dwelling on land at 1 Smithy. The appellant also referred to a dwelling erected with permission at 49 Smithy. I viewed both sites during my visit. The appeal site does not compare favourably in terms of plot size, relationship to the pattern of local development or relationship to neighbouring residential properties, to either of those sites.
12. The appellant has also referred to the appeal site as being 'brownfield' or previously developed land. However, land in built-up areas such as private residential gardens, are excluded from the Framework's definition of previously developed land.
13. I also note that there have been no objections to the proposed dwelling from the existing occupiers of Nos 57, 58 and 59. The lack of objections does not in itself make a development acceptable.
14. For the reasons given above I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR



Appeal Decisions

Site visit made on 5 January 2016

by Neil Pope BA (Hons) MRTPI

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

Decision date: 6 February 2016

Appeal A Ref: APP/D3315/W/15/ 3131334

North Heywood Farm, Stawley, Wellington, Somerset, TA21 0HW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Ian Yule against the decision of Taunton Deane Borough Council.
 - The application Ref. 35/14/0019/CMB, dated 24 November 2014, was refused by notice dated 21 January 2015.
 - The development proposed is the conversion of existing agricultural building into a single habitable building.
-

Appeal B Ref: APP/D3315/W/15/3137526

North Heywood Farm, Stawley, Wellington, Somerset, TA21 0HW.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
 - The appeal is made by Mr Ian Yule against the decision of Taunton Deane Borough Council.
 - The application Ref. 35/15/0019/CMB, dated 8 September 2015, was granted approval by notice dated 19 October 2015 subject to conditions.
 - The development granted approval is a "change of use from agricultural building to dwelling house (Use Class 3) (*sic*) and associated building works".
 - The conditions in dispute are Nos. 2, 3 and 5. Condition 2 states: Prior to the commencement of development the applicant shall investigate the history and the current condition of the site to determine the likelihood of the existence of contamination arising from previous uses. The applicant shall: (a) Provide a written report to the Local Planning Authority which shall include details of the previous uses of the site for at least the last 100 years and a description of the current condition of the site with regard to any activities that may have caused contamination. The report shall confirm whether or not it is likely that contamination may be present on the site. (b) If the report indicates that contamination maybe present on or under the site, or if evidence of contamination is found, a more detailed site investigation and risk assessment shall be carried out in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination CLR11" and other authoritative guidance (or guidance / procedures which may have superseded or replaced this). A report detailing the site investigation and risk assessment shall be submitted to and approved in writing by the Local Planning Authority. (c) If the report indicates that remedial works are required, full details shall be submitted to the Local Planning Authority and approved in writing and thereafter implemented prior to the commencement of the development or at some other time that has been agreed in writing by the Local Planning Authority. On completion of any required remedial works the applicant shall provide written confirmation that the works have been completed in accordance with the agreed remediation strategy. Condition 3 states: (i) Prior to its implementation, 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. (ii) The scheme shall be completely carried out within the first
-

available planting season from the date of commencement of the development, or as otherwise extended with the agreement in writing of the Local Planning Authority. (iii) For a period of five years after the completion of each landscaping scheme, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of a similar size and species, or the appropriate trees or shrubs as may be approved in writing by the Local Planning Authority. Condition 5 states: The windows and doors hereby permitted shall be timber and thereafter maintained as such, in accordance with details to include sections, mouldings, profiles, working arrangements and finished treatment that shall first have been agreed in writing by the Local Planning Authority prior to their installation.

- The reasons given for the conditions are: Condition 2 – To ensure that land contamination can be dealt with adequately to prevent any harm to the health, safety or amenity of any users of the development, in accordance with Taunton Deane Core Strategy Policy DM1(f) and paragraphs 120-122 of the National Planning Policy Framework; Conditions 3 and 5 – To ensure that the proposed development does not harm the character and appearance of the area in accordance with policy DM1 of the Taunton Deane Core Strategy.
-

Decisions

1. The appeals are allowed. Prior approval is granted for a change of use to a dwellinghouse and associated building works at North Heywood Farm, Stawley, Wellington, Somerset, TA21 0HW. Approval is granted in accordance with the terms of applications Refs. 35/14/0019/CMB, dated 24 November 2014 and 35/15/0019/CMB, dated 8 September 2015 and the plans submitted with the applications.
2. In respect of Appeal A, prior approval is granted subject to the conditions numbered 1-3 (inclusive) below. In respect of Appeal B, I vary the prior approval by deleting the conditions on the approval dated 19 October 2015 and substituting them for the following:
 1. The development hereby permitted shall be completed within a period of 3 years starting with the date of this decision.
 2. If contamination is discovered within the site or the building during the course of development building works shall cease until such time as details identifying the source of the contamination and remedial works necessary for addressing such contamination have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved works of remediation.
 3. Details of the materials to be used in the external walls and roof of the building shall be submitted to and approved in writing by the Local Planning Authority prior to being used in the building. The development shall be undertaken in accordance with the approved details.

Procedural Matters

3. These appeals relate to the same proposal and building. A more concise description of the proposal is as a change of use to a dwellinghouse and associated building works.
 4. At the time the Council determined the application that is now the subject of Appeal A the relevant provisions were set out in Class MB of the Town and
-

Country Planning (General Permitted Development) Order 1995 (as amended). In effect, these provisions have now been replaced by Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015.

5. Following changes to the Government's Planning Practice Guidance (PPG) in March 2015, the Council reviewed its case in respect of Appeal A. Whilst the Council maintains that the appeal site is within an unsustainable location it accepts that it can no longer argue that the use of the building for residential purposes would be either impractical or undesirable on sustainability grounds. As a consequence, its reason for refusal falls away. Prior approval should not therefore be withheld.
6. On the Planning Appeal Form in respect of Appeal A the appellant has indicated that the reason for the appeal is against the refusal of prior approval and the failure to give notice within the appropriate period. Whilst I comment below on the appellant's argument regarding the time taken to determine the application an appeal cannot proceed on the basis of a refusal and a failure to determine. A refusal notice was issued by the Council and Appeal A has been processed on this basis. I have determined the appeal accordingly.
7. The application that is now the subject of Appeal B was submitted in response to the Council's revised position in respect of Appeal A. Having now also reviewed its case in respect of Appeal B, the Council does not wish to defend its position regarding the landscaping condition (condition 3).
8. As the Appeal A scheme is identical to the one that the Council granted prior approval in October 2015 (Appeal B) it would be nonsensical for me when determining Appeal A to not consider the appropriateness of those conditions which are in dispute under Appeal B. I shall frame the main issue accordingly.
9. Applications for costs were made by the appellant against the Council. These applications are the subject of separate Decisions.

Main Issue

10. Whether, in granting prior approval, conditions relating to land contamination and the use of timber framed windows and doors would meet the relevant tests for conditions as set out in paragraph 206 of the National Planning Policy Framework (the Framework).

Reasons

Land Contamination

11. The Framework and the development plan¹ include a requirement for new development to have regard to the amenity and safety of future occupants of land and buildings. Agricultural buildings are known potential areas of contamination and contamination risks is one of the matters specifically identified in section Q.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. In determining whether prior approval is required it is appropriate to consider land contamination.
12. I understand that the appeal building is about 40 years old and was designed and previously used for calf rearing. A small part of the building has also been used to treat fence posts with creosote from a small bunded tank. I note the

¹ Policy DM 1(f) of the adopted Taunton Deane Core Strategy 2011-2028.

appellant's remarks that there has never been any spillage or contamination from this tank. Be that as it may, it is not possible to reasonably conclude that there would be no risk of contamination from activities such as pesticides and animal waste associated with the previous agricultural use of the building.

13. To ensure that the health of future occupiers of the building is not adversely affected it would therefore be necessary to attach a condition regarding land contamination. Such a condition would be relevant to planning and to the proposed development. However, the condition used by the Council which, amongst other things, requires details of previous uses of the site for at least the last 100 years is excessive and unreasonable. This disputed condition does not therefore meet all of the tests set out in the Framework. In this regard, the appeal succeeds.
14. It is reasonable to expect the Council's Environmental Control Officer (ECO) to have been informed of the age of the building and the previous agricultural activities. It appears to me that in dealing with this matter the Council has used a 'standard condition' rather than one specifically related to the proposed development. Moreover, there is nothing to indicate that the ECO requires further investigation beyond the details already supplied by the appellant.
15. A planning condition would therefore only need to relate to any unexpected contamination that could become apparent after development has commenced. A condition to this effect would accord with national and local planning policies, including paragraph 206 of the Framework. This already forms part of the existing condition and would not prejudice the appellant. I shall therefore substitute a new condition dealing with any unexpected land contamination for the one that is in dispute.

Timber Framed Windows and Doors

16. The appeal building is visible from the public realm. However, it is set back from the highway and is seen in association with the appellant's existing dwelling which includes UPVC framed windows. Whilst UPVC framed windows can detract from the integrity of traditional rural buildings and the distinctive qualities of the countryside, the appeal building lacks any architectural or historic merit. Moreover, as pointed out by the appellant, the nearest dwellings have either UPVC framed windows or galvanised steel. In this instance, a condition requiring the use of timber framed doors and windows would not be reasonable or achieve any planning purpose. A condition to this effect would be at odds with the provisions of paragraph 206 of the Framework. The appeal therefore succeeds insofar as it relates to this disputed condition.

Other Matters

17. I note the arguments of both main parties concerning the 56 day period in which the Council had to determine the application that is the subject of Appeal A. I have no reason to doubt that the appellant delivered the application to the Council's offices at about 16:00 hours on 25 November 2014. However, it is somewhat unreasonable to expect the Council to do anything meaningful with the application at that time of the day. In this regard, the appellant has informed me that he was a Deputy Chief Officer in Local Government. It would also have been open to the appellant to contact the Council when he deemed the 56 day period to have expired to ascertain whether or not prior approval would be forthcoming. On the other hand, knowing the 56 day period was

close to expiring, it was open to the Council to ensure its decision was conveyed promptly to the appellant so as to avoid any dispute / uncertainty regarding the validity of its decision. The appellant has complained to the Local Government Ombudsman regarding the Council's actions and it would be inappropriate for me to comment further.

18. My attention has been drawn to the findings of some other Inspectors regarding disputes elsewhere in respect of the 56 day period for notifying applicants as to whether prior approval is given or refused². Each case must be determined on its own merits and the information in the appeal before me regarding this particular matter is such that it would need to be tested at an oral event to ensure a properly informed decision was arrived in respect of the arguments concerning the time taken to determine this application. As I am allowing these appeals on other grounds, little would be served by putting the parties to the time and expense of holding a Hearing into this matter.

Other Planning Conditions

19. The 2015 Order requires development to be completed within a period of three years from the prior approval date. A condition to this effect would therefore also be necessary. As some building works are proposed the undisputed condition regarding the submission of the details of external building materials would be necessary to safeguard the character and appearance of the area. No other conditions would be necessary. These other conditions accord with the requirements of paragraph 206 of the Framework.

Conclusion

20. Given the above, these appeals should succeed. In respect of Appeal B, the conditions on the approval granted by the Council are deleted and substituted for those set out above.

Neil Pope

Inspector

² APP/X1118/A/14/2222530, APP/F0114/A/14/2225691 and APP/Z3825/A/14/2224715.

APPEALS RECEIVED

Site: 14 HENLEY ROAD, TAUNTON TA1 5BJ

Proposal: ERECTION OF CARBON NEUTRAL 2 BEDROOMED DETACHED DWELLING TO THE SOUTH OF 14 HENLEY ROAD, TAUNTON

Application number: 38/15/0196

Appeal reference: APP/D3315/W/16/3142112

Site: PIXFORD FRUIT FARM, RALEIGHS CROSS ROAD, COMBE FLOREY, TAUNTON, TA4 3HS

Proposal: CONSTRUCTION OF SOLAR FARM FOR UP TO 5MW OF GENERATING CAPACITY COMPRISING OF INSTALLATION OF SOLAR PHOTOVOLTAIC ACCESS TRACKS, FENCING AND CCTV ON LAND AT PIXFORD FRUIT FARM, RALEIGHS CROSS ROAD, COMBE FLOREY

Application number: 02/15/0006

Appeal reference: APP/D3315/W/16/3142598

Site: HAZELHURST, MINEHEAD ROAD, BISHOPS LYDEARD, TAUNTON, TA4 3BS

Proposal: ERECTION OF A DETACHED DWELLING WITH DOUBLE GARAGE AND DRIVEWAY ON LAND NORTH OF HAZELHURST, AND ERECTION OF REPLACEMENT GARAGE WEST OF HAZELHURST, MINEHEAD ROAD, BISHOPS LYDEARD.

Application number: 06/15/0020

Appeal reference: APP/D3315/W/15/3138063

Enforcement Appeal

Site: LANGDON INDUSTRIES SITE, WALFORD CROSS, TAUNTON, TA2 8QP

Alleged breach of planning control: ALLEGED UNAUTHORISED B2 (WOOD CHIPPING) BUSINESS USE OF FORMER B1 / B8 INDUSTRIAL UNIT.

Reference number: APP/D3315/C/15/3141203

Appeal reference: E/0035/14/15
