

Site: WILSCOMBE WOOD COTTAGE, LANGFORD BUDVILLE ROAD, WIVELISCOMBE, TAUNTON, TA4 1NJ

Application number: 23/17/0027

Proposal: Replacement of dwelling, garage and mobile home with the erection of 1 No. dwelling and detached garage at Wilscombe Wood Cottage, Milverton (amended scheme to 23/16/0039)

Appeal Decision: Allowed

Site: 128 GALMINGTON ROAD, TAUNTON, TA1 5DW

Application number: 52/18/0003

Proposal: Formation of vehicular access at 128 Galmington Road, Taunton

Appeal Decision: Dismissed



Appeal Decision

Site visit made on 14 May 2018

by **S Rennie BA (Hons) BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 June 2018

Appeal Ref: APP/D3315/W/17/3191277

Wilscombe Wood Cottage, Milverton, Taunton, Somerset TA4 1NJ

- 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 O Hines against the decision of Taunton Deane Borough Council.
 - The application Ref 23/17/0027, dated 11 July 2017, was refused by notice dated 6 October 2017.
 - The development proposed is the replacement of dwelling, garage and mobile home with the erection of 1 No dwelling and detached garage – Amended Scheme.
-

Decision

1. The appeal is allowed, and planning permission is granted for the replacement of dwelling, garage and mobile home with the erection of 1 No dwelling and detached garage, at the rear of Wilscombe Wood Cottage, Milverton, Taunton, Somerset TA4 1NJ, in accordance with the application, Ref 23/17/0027, dated 11 July 2017, subject to the following conditions:

<https://www.gov.uk/planning-inspectorate>

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan 1:1250
 - 4816/11 Revision C
 - 4816/8 Revision B
 - 4816/9 Revision A
 - 4816/7 Revision B
 - 4816/6 – Mobile Home (as existing)
 - 4816/12 – Garage/Store (as existing)
 - 4816/1 – Dwelling Footprint (as existing)
 - 4816/2 – West Elevation (as existing)
 - 4816/3 – North Elevation (as existing)
 - 4816/4 – East Elevation (as existing)
 - 4816/5 – South Elevation (as existing)

- 4816/10 – Site Plan (as existing)
- 3) The development hereby approved shall be carried out in strict accordance with the recommendations contained within the submitted Preliminary Bat Roost Survey, prepared by Halpin Robbins, dated 24 October 2016.
- 4) Prior to the first use of the garage and ancillary accommodation as part of the development hereby approved, the existing mobile home structure and other ancillary buildings should be removed in their entirety from the site, as detailed on the submitted plans and in the supporting information.

Application for costs

2. An application for costs was made by Mr O Hines against Taunton Deane Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The appeal scheme before me seeks the replacement of the existing dwelling with a new dwelling together with a detached garage with living accommodation above. However since the appeal has been lodged, the Council has granted planning permission for a dwelling of similar size and characteristics as in this appeal but with a smaller-sized garage¹. This permission was amended² to include retention of the extant mobile home which sits on the site; the mobile home having been established as lawful through the grant of a certificate of lawful development³. That amendment was also granted planning permission by the Council.
4. There is therefore little point in me making any finding on the acceptability of the dwelling, and I do not do so in my decision. Instead, I find the area where the difference between the parties lie, and subsequently will form the main issue in this appeal concerns the proposed garage and annexe building,.
5. I wrote to the main parties asking them to comment on whether it would be prudent to impose a suitably worded condition requiring the removal of the mobile home in the event I were minded to allow the appeal. I have taken the responses received into consideration in my decision.

Main Issue

6. Having regard to the above, I find that the main issue is the whether the proposed garage and annexe would represent a substantially larger building than the approved garage and if so, whether other considerations would justify it.

Reasons

7. The site is within the countryside. In this regard, policy DM 2 (Development in the Countryside) of the Taunton Deane Core Strategy 2011 – 2028 (Core Strategy) is pertinent to the appeal. This policy states that outside of defined

¹ Council reference 23/16/0039

² Council reference 23/17/0044

³ Council reference 23/17/0023/LE

settlement limits a number of uses will be supported. Section 5 of this policy relates to replacement dwellings, and 5a stating in specific reference to the appeal that *"a one-for-one replacement and is not substantially larger than the existing dwelling"*.

8. The appellant raises specific concerns as to the applicability of the policy given that the matters of dispute concern only the garage and annexe, and not the dwelling itself. However, I do not share these sentiments. The proposed garage and annexe would be an ancillary building within the residential curtilage of the dwelling and used incidental to its enjoyment. As such, I consider that it is a reasonable interpretation that this policy relates to the replacement of the house and the outbuildings in this case.
9. According to the figures given by the appellant, and not disputed by the Council, the floor area of the approved smaller garage taken with the mobile home, which would be consistent with the approved scheme⁴, would amount to some 58sqm. The enlarged garage the subject of this appeal would measure 86.4sqm. While the overall height difference between the approved garage and that proposed here would amount to some 0.8m difference, I nevertheless find that the garage and annexe building before me would be considerably larger than both the volumes of both the approved garage and mobile home.
10. In applying Core Strategy policy DM 2 (5) in its strictest form, I find that the proposed garage and annexe taken by itself would not amount to a one-for-one replacement and it would be substantially larger than the approved garage and mobile home structure cumulatively. It would, accordingly, not accord with the policy.
11. Having said that, Core Strategy policy DM 2 as worded does not direct refusal of buildings which would be substantially larger. Indeed to do so would I find bring the policy in direct conflict with the National Planning Policy Framework (the Framework). Underpinning policy DM 2 is the need to protect the intrinsic character and beauty of the countryside.
12. Here, the Council does not advance an explanation as to the harm that would occur from the garage and annexe building before me; . Moreover, the Council has made clear that there are visual benefits of the scheme, stating the development would result in a more appropriate condensed built form within the current residential curtilage and would improve the character and appearance of the site. I share these sentiments, and moreover find the proposed garage and annexe being set to the rear of the site against a woodland backdrop and would not be prominent from any public view.
13. On this basis, I find that the proposed development would not have any adverse impacts to the character and appearance of the countryside in this area, and would, moreover, result in a visual benefit over the existing arrangement of buildings on site.
14. As stated above, the appeal before would result in the removal of the mobile home structure on the site. However, I am minded to the fact that because of the subsequent establishment of lawfulness and planning permission for it, there is a real possibility of the mobile home structure remaining on the site if the proposed garage and annexe were built.

⁴ Council reference 23/17/0044

15. If this were to be the case, it would amount to some 108sqm of floor space, and would be considerably more built form than the approved garage with mobile home, and on which the Council made its favourable assessment. On this basis I find that the removal of the existing mobile home and outbuildings as part of the proposed development is necessary to preserve the character and appearance of the area. This can be controlled by condition.
16. Considering all of the submitted information, I find balance that the proposed development would not undermine or cause significant harm to the intrinsic character of the countryside, and not significantly more so than the approved smaller garage. This is sufficient, in my judgement, to outweigh the conflict with the Core Strategy policy DM2.
17. In reaching my decision, I have had regard to the Council's concerns in respect to the sustainability of the location. However, as the living accommodation would be ancillary to the replacement dwelling also proposed then this would not constitute a new dwelling in a countryside location. Whilst the site has limited accessibility there is an existing house and mobile home on site and so would not result in a less accessible development than existing.
18. The Council has also drawn my attention to adopted policy SB1 (Settlement Boundaries) of the Taunton Deane Adopted Site Allocations and Development Management Plan, which is relevant as the proposals are outside of any settlement boundary. The policy states that if outside of any settlement boundary the site is within the open countryside. In these circumstances it refers to the Core Strategy policies it needs to be assessed against, including policy DM2, which I have already carried out.

Other Matters

European Protected Species (Bats)

19. The appellant has submitted a 'Preliminary Bat Roost Survey' dated 24 October 2016, by HalpinRobbins Ecology & Environmental Services. Further letters from HalpinRobbins, as recently as 26 April 2017, have also been submitted to address the issue of bats at the existing site. The surveys state that the roof of the existing house is being used by two species of bat, with the surrounding area being used by bats for foraging and as a commuting habitat.
20. As well as stating that a Protected Species Mitigation Licence would be needed, mitigation has also been advised with the survey conclusions that 'bat lofts' need to be incorporated with the proposed development. A bat loft area has been shown to be incorporated into the proposed garage and ancillary accommodation building. I also acknowledge that the HalpinRobbins letter of April 2017 sets out the benefits of a bat loft in the larger proposed garage, rather than the smaller version of the garage previously approved. Based on the submitted survey information and considering the response from English Nature that does not raise any objections, I am satisfied that the protected species can be safeguarded subject to a condition for a strategy to protect bats and birds.
21. In this regard, Circular 06/2005 states that the presence of protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat. Also, the Habitats Directive requires member states

to establish a system of strict protection for European Protected Species (of which Bats are one such species). Regulation 9(3) requires that a competent authority must have regard to the requirements of the Habitats Directive in exercising their functions. Furthermore, Section 40 of the Natural Environment and Rural Communities Act 2006 states that any public authority, in exercising its functions, must have regard to the purpose of conserving biodiversity.

22. Because the development would result in a breach of protection to European Protected Species in effectively destroying a bat roost, I have in accordance with the Regulations assessed the proposal against the three derogation tests to ascertain the likelihood of Natural England granting a licence to carry out the works. In this respect, I consider there to be a reasonable prospect of this as:
- (a) the development is in the public interest as it would provide a new dwelling to meet modern building standards;
 - (b) there is no satisfactory alternative to this site given that the proposal is site specific and for the replacement of an existing house on site;
 - and (c) that the works authorised would not be detrimental to maintenance of the population of the Bat species affected.
23. In view of the above, and on the basis of the evidence before me, I have concluded that although the development would result in the loss of the existing Bat roosts, it would nonetheless be acceptable as appropriate measures and mitigation can be provided. The proposal would therefore accord with Core Strategy policy CP8 which, amongst other things, seeks to protect habitats and species.
24. In view of the above, I am also satisfied that the development would accord with the provisions of Circular 06/2005 and Paragraphs 17 (bullet point 7) and paragraph 118 of the Framework which state that local planning authorities should aim to conserve and enhance biodiversity and refuse planning permission if significant harm from a development cannot be avoided, adequately mitigated or as a last resort, compensated for.

Conditions

25. In addition to the standard implementation condition, a condition to ensure that the development is carried out in accordance with the approved plans would be necessary in the interests of certainty.
26. Whilst I acknowledge the recommended condition from Natural England with regards the need for a strategy to protect bats and birds, I believe that the condition recommended by the Council (subject to some changes in the interest of clarity and preciseness) is satisfactory to address the issue. The surveys have been completed in detail and recommendations made, with no objections raised by either the Council or Natural England on this matter. I also have no evidence to suggest that the proposed development would have a detrimental effect to birds, with the submitted survey referring to bats only.
27. As such, I have attached a condition that requires the mitigation measures should be in accordance with the survey document produced by HalpinRobbins, dated 24 October 2016.
28. As stated above, I find a condition requiring the removal of the mobile home from the site prior to the completion of the proposed garage and ancillary accommodation is necessary to ensure the built form at the site does not undermine the character and appearance of the area.

Conclusion

29. For the reasons outlined above the appeal should be allowed.

Steven Rennie

INSPECTOR



Costs Decision

Site visit made on 14 May 2018

by **S Rennie BA (Hons) BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 June 2018

Costs application in relation to Appeal Ref: APP/D3315/W/17/3191277 Wilscombe Wood Cottage, Milverton, Taunton, Somerset TA4 1NJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr O Hines for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal of planning permission for the replacement of dwelling, garage and mobile home with the erection of 1 No dwelling and detached garage – Amended Scheme.
-

Decision

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

Reasons

2. Written submissions have been made from both the appellant and the Council, which have been fully considered as part of this costs application.
3. The National Planning Practice Guidance (PPG) 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.
4. The PPG makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. As has been concluded in my decision for this development, the Council has clearly explained why the development would not be in accordance with the relevant criteria of the Taunton Deane Borough Council Core Strategy 2011 – 2028 (Core Strategy). This is on the basis that the proposed development would be larger than existing. However, the Council has not provided any detailed explanation as

to what harm this would lead to, particularly in connection with the aims and objectives of Core Strategy policy DM 2.

6. In the Council's reason for refusal, in reference to Core Strategy policy DM 2, it states that "*the enlarged garage with first floor living accommodation above, would result in unacceptable additional development in open countryside that would be in an unsustainable location and would have unacceptable impacts on the visual amenities of this rural location*". However, neither the unsustainable

location nor the unacceptable impacts on the visual amenities has been explained in any detail in the submitted Council documentation.

7. In regards to the location, it is accepted by all parties that this is a rural location, but the proposed development is a replacement dwelling with ancillary accommodation above a garage. The site currently has a dwelling with outbuildings, including a mobile home used as ancillary accommodation. As such, the proposals would not result in an increase of dwellings at the site and so it is not clear why the issue of the unsustainable location has been included in the reason for refusal, especially when Core Strategy policy DM 2 does allow for replacement dwellings in the countryside, subject to criteria.
8. In regards to the visual impacts, this has not been substantiated with any evidence. Moreover, the Council's delegated report states that the development would result in a more "*appropriate condensed built form*" from the existing arrangement, which would "*improve the character and appearance of the site when the older elements of the site are removed.*" On this basis, it is not clear how the development proposed would lead to an adverse visual impact when there are visual benefits for the site.
9. This demonstrates that the Council has included vague and unsubstantiated reasons for refusal.
10. I have already found Core Strategy policy DM2 of the Core Strategy to be relevant to the decision, and other matters raised by the appellant have also been addressed in the appeal decision, in respect to policy DM1, other examples of similar cases in the area, for example. On these matters I do not find the Council has acted unreasonably.
11. I am also satisfied that the Council were aware of subsequent decisions at the site and the situation with regards permitted development rights. I must therefore assume that this has not changed their opinion on the main issues of the case which is not unreasonable behaviour. I am also satisfied that they are fully aware that this accommodation above the garage would be ancillary and therefore I must assume that there is no misunderstanding as to the proposals.
12. Furthermore, I do not consider that the Council approval of planning application 23/17/0044 is inconsistent, considering their refusal of this appeal case, as there are differences between the cases.
13. However, on the matter of the unsubstantiated and vagueness of aspects of the reason for refusal I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.
14. I have taken into consideration the Council's rebuttal, which includes an explanation why conditions or negotiations could not have overcome the reasons for refusal. However, this rebuttal does not sufficiently explain the lack of substantiated evidence or explanation regarding the harm the development would cause that led to this refusal.

Costs Order

15. 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 to Mr O Hines, the costs of the appeal proceedings described in the heading of this decision.

16. The applicant is now invited to submit to Taunton Deane 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.

Steven Rennie

INSPECTOR



Appeal Decision

Site visit made on 15 June 2018

by John D Allan BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2018

Appeal Ref: APP/D3315/D/18/3200772
128 Galmington Road, Taunton, Somerset TA1 5DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Joan Viveash against the decision of Taunton Deane Borough Council.
 - The application Ref 52/18/0003, dated 9 January 2018, was refused by notice dated 6 April 2018.
 - The development proposed is described as:
 - 1) *Dropped kerb;*
 - 2) *New vehicle access to existing driveway; and*
 - 3) *Replacement of gravel hardstanding with brindle paviors laid on sand.*
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal property, together with 126 Galmington Road, was the subject of an appeal decision in July 2017 for a similar proposal (Ref APP/D3315/W/17/ 3170712).

I have not been provided with a copy of the plans that were considered as part of the last appeal, but it appears that the principal differences this time are: (i) the exclusion of No 126 from forming any part of the proposal; (ii) a change to the position of a fence to the side of No 128; and

(iii) changes proposed to the surface of the existing hardstand to the front of No 128.

3. Similar to the previous case, the proposed dropped kerb to the edge of the carriageway along Galmington Road is not contained within the red line that was drawn around the planning application site. Accordingly, for the avoidance of doubt and consistent with the previous Inspector, I have dealt with the development that is included within the red site line as shown on the application plans.
4. At the time of my visit the appeal property had scaffolding erected around it with some significant improvements and alterations underway, which I understand to be part of works to facilitate the appellant, who is registered disabled and partially sighted. There was a van parked on the site directly to

<https://www.gov.uk/planning-inspectorate>

the front of No 128, and a car parallel to it and close up to the notional side boundary with No 126.

Main Issue

5. The main issue is the effect of the construction of a new vehicle access to an existing hardstanding at 128 Galmington Road on highway safety.

Reasons

6. At the time of my visit in the early part of the morning, it was evident to me that Galmington Road was well-used and fairly busy. I also saw that the highway and its surroundings were as described by the previous Inspector. There are grass verges to either side of the road between the footways and the pavements; on-street parking is controlled by double yellow lines for long distances but with some designated parking spaces within the highway; there is a signal controlled pedestrian and cycle crossing close to the appeal site with its zig-zag keep-clear markings extending in front of No 128; and wooden bollards in the verge in front of the appeal site at around 4m intervals to prevent parallel parking at this point.
7. At present there is a fence and gate running perpendicular to the side of No 128 and flush with its front elevation. This attaches to a similar arrangement to the side of No 126, with a fence running from this point along the side boundary between both properties and continuing to the rear. It is proposed to remove the fence that runs between the flank walls of Nos 128 and 126, and to secure the rear garden area with a new fence and gate set much deeper into the site and approximately aligned with the rear wall of the existing dwelling. This revised arrangement would provide space to the side of 128 for a vehicle to enter and park.
 8. Together with the change to the materials for the existing hard surface, the appellant argues that these works would provide extra space to the front of the house for parking and the required turning space to enable vehicles parked on the site to leave in forward gear. However, the turning space that would be available is not clearly shown on the application drawings. Apart from providing the potential for an additional parking space to the side of No 128, I am unable to detect any material difference between the arrangement that is now proposed and that which was considered by the previous Inspector.
9. In the previous appeal the Inspector recognised that the front garden to No 128 was laid to gravel as an existing hard standing. The use of brick paviors as an alternative surface would not increase the space to the front of the house, which as previously recognised, is constrained in nature. A single car parked to the side of No 128 may be able to reverse out and swing into space in front of the dwelling, but this would be dependent upon a turning manoeuvre for a vehicle that is not clearly demonstrated. Moreover, I note that parking is desired by the appellant for a vehicle that they can use as well as that of a carer. In these circumstances any possible potential for a second parked car to be able to turn would be likely to be lost. As was the case previously, reversing manoeuvres would need to occur very close to the controlled pedestrian and cycle crossing. There are no change in circumstances that lead me to conclude other than in accord with the previous Inspector that these movements would be a danger to other users of the highway who would be

concentrating most upon activity in the road, at the crossing, and movements at the nearby junction with College Way rather than the movement of vehicles from the appeal site.

10. I have noted the appellant's assertion that the appeal site has been used by parked vehicles for many years. It is clear that vehicles can access the land in-between the bollards on the verge and that tyre tracks in the verge suggest that this is the case. Nevertheless, the proposal that is before me would have the potential to increase existing vehicle movements beyond any that already occur. This would be to the detriment of others using the public highway at a point described by the Council as a safety zone for the adjacent crossing. In addition, previous concerns with regard to partly restricted visibility for drivers leaving the site due to a lamp post within the footway and a mature tree within the verge are not addressed.
11. I recognise that there is high demand for the available on-street parking locally and that this often means that neither the appellant nor her carers are able to park nearby. However, I understand from the information that has been provided that the appellant's blue badge would enable a car to be parked for prescribed periods near to the front of this property and despite suggestions to the contrary, there is no substantive evidence before me of the potential for serious harm to the free flow of traffic or highway safety as a consequence. In addition, whilst I fully recognise the need for any disabled person to gain easy access to a vehicle in order to sustain a good quality of life there is no information before me that explains how the appellant's disability impacts upon their mobility or ability to walk from the house to a parked car. The inability to park a vehicle within the curtilage of No 128 would not prohibit the appellant from using or accessing a vehicle. Neither would it prohibit a carer from doing so and attending to their duties at the appeal property, including in the case of an emergency.
12. I have taken note of the properties elsewhere along Galmington Road which have driveways, including one near to another crossing. However, I do not know the background to any of these and in any event, I saw none that were directly comparable to the circumstances that prevail at No 128.

13. When all of these considerations are taken together I find that the personal circumstances of the appellant do not outweigh the harm that I have identified to highway safety. I am satisfied that this decision is proportionate having weighed the appellant's submissions against the public interests of the case and that the rights of the appellant under the Human Rights Act 1998 would not be violated.

Conclusion

14. For the reasons given I conclude overall that the proposal would lead to road safety problems in conflict with Policy DM1 of the Taunton Deane Core Strategy (2012) and the National Planning Policy Framework as it seeks to ensure safe and secure arrangements for all users of the highway. Accordingly, and having regard to all other matters raised, the appeal is dismissed.

John D Allan INSPECTOR

APPEALS RECEIVED – 18 July 2018

Site: HILLSIDE, EAST NYNEHEAD ROAD, NYNEHEAD, WELLINGTON, TA21 0DD

Proposal: Erection of 1 No. dwelling with detached double garage and associated works in the garden to the side of Hillside, East Nynehead

Application number: 26/17/0013

Appeal reference: APP/D3315/W/18/3203331

Site: OLANDS, BURN HILL, MILVERTON, TAUNTON

Proposal: Erection of 4 No. dwellings with garaging and associated works with extension to primary school car park facilities at Olands, Burn Hill, Milverton

Application number: 23/17/0020

Appeal reference: APP/D3315/W/18/3203147

Site: LANGALLER LANE, CREECH ST MICHAEL

Proposal: Outline planning application with all matters reserved, except for access, for the erection of up to 200 No. dwellings with public open space, landscaping and sustainable drainage system (SuDS) with vehicular access point off Langaller Lane, Creech St Michael

Application number: 14/17/0033

Appeal reference: APP/D3315/W/18/3205705
