

20/20/0011

MRS E EDWARDS

Change of use of land from agricultural to domestic including erection of wall and additional patio slabs at Ilbeare, Cattlewash, Fitzroy Road, Norton Fitzwarren (retention of works already undertaken).

Location: CATTLEWASH, ILBEARE, FITZROY ROAD, NORTON
FITZWARREN, TAUNTON, TA2 6PL

Grid Reference: 319428.127931 Retention of Building/Works etc.

Recommendation

Recommended decision: Conditional Approval

Recommended Conditions (if applicable)

1. The development hereby permitted shall be completed within 12 months of the date of this permission.

Reason: In order to regularise the development.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

(A4) DrNo Location Plan
(A4) Site Plan
(A1) Proposed Revised Plan

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) or any order revoking and re-enacting the 2015 Order with or without modification, no development as identified in Class E or Class F, Part 1, Schedule 2 of the GPDO is permissible, other than that expressly authorised by this permission shall be carried out without the further grant of planning permission.

Reason: To ensure that the development does not harm the amenities of the neighbouring property or the character and appearance of the area.

4. The hedges and trees around the perimeter of the site shall be not be altered and shall be retained thereafter.

Reason: To avoid potential harm to the landscape.

5. The stock fencing which runs along side the Public Footpath shall be retained and maintained thereafter.

Reason: In the interests of public amenity.

Notes to Applicant

1. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.
2. Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure/stopping up/diversion) or other authorisation has come into effect/ been granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with

Proposal

This application seeks retrospective permission for the change of use of an area of land to the east of Cattlewash from agricultural to domestic use.

The application was deferred from Planning Committee as the panel wished to see a wall built between the Public Footpath as concerns were raised regarding the dogs being too close to users of the footpath. As such the revised plans show a brick built wall which runs to the north of the site and the enclosed area for the dogs. It would be stone built, 1.1 metres high and topped with shrubbery. The fencing that runs alongside the Public Footpath would remain and will be conditioned. The revised plans also include the improvement and repair of the existing patio surrounding the dog kennel.

Site Description

The site is a long parcel of land, measuring approximately 3600 sq metres, located to the east of the residential curtilage of the property known as Cattlewash. There is an existing dog kennel within this area of land which has been deemed to be permitted development by the Council. The kennel and area of land is used by the applicants dogs.

The site is bound by typical rural tall trees and hedges to the south and east and a wooden fence binds the west and north. A watercourse runs immediately adjacent to the north boundary of the site. The site is accessed from an unclassified road which passes the site. There are two other properties, one which adjoins the site, known as Illbeare and another, Willows Watch, which is further to the north east.

There is also a public footpath accessed at the entrance to the site which then proceeds across the adjoining field to the south east which meets up with Langford Road and another footpath T/15/50 which crosses the proposal site and also meets up with Langford Road.

Relevant Planning History

20/12/0032 Certificate of Lawful Development for the continued use of building as a residential dwelling – Approval – 20/11/2012.

20/17/0017 Demolition and erection of replacement dwelling with associated works- Conditional Approval – 30/10/2017.

Consultation Responses

KINGSTON ST MARY PARISH COUNCIL - Kingston St Mary Parish Council has reviewed the planning application and objects to the change of use of the land from agricultural to domestic. It is considered detrimental and inappropriate to introduce such a large domestic area into a predominantly agricultural setting, which would adversely affect the rural character of the area.

The Parish Council would like to see this planning application withdrawn and resubmitted with an application which is acceptable to the applicant and the majority of residents residing in the Fitzroy Hamlet.

Change of use of land from agricultural to domestic including erection of wall and additional patio slabs at Ilbeare, Cattlewash, Fitzroy Road, Norton Fitzwarren (retention of works already undertaken).

2nd consultation -

Kingston St Mary Parish Council met on 9 November 2020 and would like to make the following comments relating to the above planning application.

The Parish Council has taken into consideration that the Planning Officer has recommended conditional approval of this planning application. In addition, the Planning Officer states that 'The fact that the applicant keeps dogs on this land cannot be a material planning consideration as the keeping of dogs is a domestic use and therefore this application will consider the amenity impacts of the use of this land as domestic only'.

The Parish Council has been advised, by local residents, that the applicant currently keeps a large number of big dogs on the land, including Alaskan Malamutes and several large Dobermanns. The applicant may be keeping these dogs for commercial purposes rather than as domestic pets. It would be prudent to resolve this area of concern before approving this planning application, as a change of use to 'Business Use' may be required rather than a change of land from agricultural to domestic.

The applicant's 'Proposed Revised Plan' does not show PROW T15/50 and it is

difficult to understand how a secure dog enclosure can be created using walls of 1.2m in height, when Dobermans can jump 1.8m. The Dobermans have recently escaped through the existing stock fencing. This has resulted in the neighbours being intimidated and reluctant to enter their gardens for fear of these large dogs running wild. Without a secure dog enclosure surrounding this parcel of land the proposed development will, create a hazard to users of the PROW and make the PROW less convenient for continued public use.

The current use of the land for keeping several large dogs is currently unsatisfactory and intimidatory for users of the PROW and the neighbouring properties. The proposed works are therefore needed as a matter of urgency and should be completed promptly.

In addition, to its concerns regarding the use of the Cattlewash site for business purposes, the Parish Council would like to see the following included as conditions, should approval be granted.

1. To prevent any further domestic development on this site, which is located outside of defined settlement limits, planning applications be required before any permitted developments take place;
2. That the walls shown on the applicant's 'Proposed Revised Plan' be increased to a height of 2m.
3. That the stock fences surrounding and within the property be made and maintained as dog proof. To prevent the dogs from getting through or digging under the fence and escaping onto the PROW or neighbouring land.
4. The proposed works should be completed promptly, within a period of 3-6 months from any permission being granted.

SCC - TRANSPORT DEVELOPMENT GROUP – Refer to Standing Advice.

PLANNING ENFORCEMENT – would like to be informed of the outcome.

PUBLIC RIGHTS OF WAY - We have no objections to the proposal, subject to the following:

1. Specific Comments

The local planning authority needs to be confident that the applicant can demonstrate that they have an all-purpose vehicular right to the property along path T 15/50. If they are unable to and permission is granted, then the local planning authority could potentially be encouraging criminal activity through permitting driving on a public path without lawful authority.

1. General Comments

Any proposed works must not encroach onto the width of the PROW.

The following bold text must be included as an informative note on any permission granted:

Development, insofar as it affects the rights of way should not be started, and the rights of way should be kept open for public use until the necessary Order (temporary closure/stopping up/diversion) or other authorisation has come into effect/ been granted. Failure to comply with this request may result in the developer being prosecuted if the path is built on or otherwise interfered with.

The health and safety of the public using the PROW must be taken into consideration during works to carry out the proposed development. Somerset County Council (SCC) has maintenance responsibilities for the surface of a PROW, but only to a standard suitable for the public use. SCC will not be responsible for

putting right any damage occurring to the surface of a PROW resulting from vehicular use during or after works to carry out the proposal. It should be noted that it is an offence to drive a vehicle along a public footpath, public bridleway or restricted byway unless the driver has lawful authority (private rights) to do so.

If it is considered that the development would result in any of the outcomes listed below, then authorisation for these works must be sought from Somerset County Council Rights of Way Group:

- A PROW being made less convenient for continued public use.
- New furniture being needed along a PROW.
- Installing any apparatus within or across the PROW.
- Changes to the surface of a PROW being needed.
- Changes to the existing drainage arrangements associated with the PROW.

If the work involved in carrying out this proposed development would:

- make a PROW less convenient for continued public use; or
- create a hazard to users of a PROW,

then a temporary closure order will be necessary and a suitable alternative route must be provided. For more information, please visit Somerset County Council's Rights of Way pages to apply for a temporary closure:

<http://www.somerset.gov.uk/environment-and-planning/rights-of-way/apply-for-a->

Landscaping - no comment.

Representations Received

4 objections have been received which raised concerns regarding:

- The revoked Certificate of Lawfulness should be discounted;
- The size of the area of land;
- The use of this agricultural land in open countryside;
- Potential significant environmental impact;
- Use of the area of land for dogs;
- The potential increase in number of dogs;
- The precedent it may set;
- Future building on the land;
- The use of the footpath;
- Restrictions and conditions that should be imposed; and
- Noise.

Following Planning Committee a second consultation was undertaken which received 1 objection which raised concerns regarding:

- The land remains Grade 2 agricultural land;

- Domestic use is not a supported use in the open countryside;
- Material economic loss from approving the application which needs to be considered against Policy SD1;
- The land could be used for agricultural purposes;
- Issues with previous permissions and development on site;
- The height of the wall; and
- The stock fencing.

Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.

The development plan for Taunton Deane comprises the Taunton Deane Core Strategy (2012), the Taunton Site Allocations and Development Management Plan (2016), the Taunton Town Centre Area Action Plan (2008), Somerset Minerals Local Plan (2015), and Somerset Waste Core Strategy (2013).

Relevant policies of the development plan are listed below.

DM1 - General requirements,
 SB1 - Settlement Boundaries,
 DM2 - Development in the countryside,
 CP8 - Environment,
 CP1 - Climate change,

Determining issues and considerations

The main issues in the determination of this application are the principle of the change of use, and whether there are any design and amenity implications.

In regards to the request that the application be determined the application against Core Strategy Policy SD1, the Council has worked proactively with the applicant to find solutions which mean that proposals secure development that improves the economic, social and environmental conditions

in the area.

In order to maintain the quality of the rural environment and ensure a sustainable approach to development, proposals outside of the boundaries of settlements identified in Core Strategy policy SP1 will be treated as being within open countryside and assessed against Core Strategy policies CP1, CP8 and DM2.

Core Policy DM2 states that outside of defined settlement limits, a number of uses will be supported.

The list of acceptable uses within such areas under this policy allows for:

1. Community Uses;
2. Class B Business Use;
3. Holiday and Tourism;
4. Agriculture, Forestry and related uses;

5. Replacement Dwellings;
6. Affordable Housing;
7. Conversion of existing buildings; and
8. Development for essential utilities infrastructure.

Whilst the change of use of land to domestic is not in the list of uses above, this area of land is near to two other domestic curtilages and arguably if the applicant was to apply for one of the uses deemed as acceptable this would cause more harm than its use as domestic garden.

In regards to the request that the application be determined the application against Core Strategy Policy SD1, the Council has worked proactively with the applicant to find solutions which ensures the proposal will improve the social and environmental conditions. Whilst not economic development, it is considered it would be unreasonable for the LPA to have requested that the applicant used the land for economic purposes.

The site is a continuation of the existing domestic curtilage of Cattlewash, it extends along the southern boundary of the garden of Ilbeare and finishes in line with the group of trees to the rear. Whilst the change of use of the land makes this application 'development'. The development would not alter the lay of the land and so there would be very limited, if any, visual impact. The Council's tree officer suggested that a condition is added to prevent the hedgerow that lines the boundary of the domestic development being replaced with a fence, which could harm the rural landscape. The Council appreciate that the previously approved dwelling is not considered 'substantially large' and therefore not in need of a 'substantially large' garden but it is not abnormal for smaller properties within the countryside to have large gardens and this large garden would not be out of character in the immediate or wider area.

Concerns have been raised regarding this application 'setting a precedent', however, each application would be considered on its own merits and would not be considered acceptable purely because there is an example of an acceptable domestic extension elsewhere. Whilst there would be a loss of Grade II agricultural land, this particular area of land is not, has not been, and won't be used for the growing of crops whilst it remains in the applicants control and as such, its loss would not be significant.

The fact that the applicant keeps dogs on this land cannot be a material planning consideration as the keeping of dogs is a domestic use and therefore this application will consider the amenity impacts of the use of this land as domestic only. The land abuts the boundary of the garden at Ilbeare. It is not considered that the use of the site as domestic would impinge upon their amenities. It is however considered necessary to restrict specific permitted development rights in order to protect their future amenities. It is not considered that this extension of domestic curtilage would have negative implications for the residents of wider area.

In response to the Parish comments regarding a potential commercial use taking place at the site. This matter was settled after this item was deferred from the last planning committee and the LPA is satisfied the applicant is not using the site for commercial purposes.

In regard to the environment and Policy CP8, the proposal does not drastically change the land therefore it is not considered that the change of use to domestic would harm the environment, and as mentioned previously, it abuts the boundary of other domestic curtilages so would not harm the character of this area.

In regard to Policy CP1, the use of the site as domestic would not intensify climate change issues.

The site is located within Flood Zone 2 and whilst its use as domestic is considered acceptable, building for residential purposes is considered to be unlikely and would be subject to consultation with the Environmental Agency.

The comments from the Public Rights of Way Officer are noted and the informative that has been requested has been added to ensure that the development does not affect the right of way.

The applicant sent revised plans showing a 1.1 metre wall topped with shrubbery to satisfy the concerns of the panel raised during the previous committee regarding the dogs getting too close to the public footpath fencing. The wall would separate the dog's enclosure from the fencing next to the public footpath. This fencing that runs alongside the Public Footpath would remain and will be conditioned. The applicant was not willing to increase the wall height on the basis that the wall and fencing would be sufficient to keep the dogs away from the path. A time limiting condition will be added to ensure the wall is complete within 1 year, as 6 months was not considered a reasonable amount of time.

Following the revised plans received the above assessment is still considered to be relevant.

In light of the above assessment it is not possible to identify any harm in terms material planning considerations and therefore the application is recommended for approval.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

Contact Officer: Abigail James