

APPEAL DECISIONS –10 DECEMBER 2020

Site: HOLIDAY UNITS AT, PIPISTRELLE HOUSE, SMEATHARPE ROAD, CHURCHSTANTON, TAUNTON, HONITON, EX14 9RE

Proposal: Alleged unauthorised use of three holiday let properties for domestic use at Pipistrelle House, Smeatharpe Road, Churchstanton, Taunton, Honiton, EX14 9RE.

Application number: E/0190/10/18

Reason for refusal: Appeal – Dismissed, Costs – Refused



The Planning Inspectorate

Appeal Decisions

Site visit made on 20 May 2020 by **Roy**

Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Appeal A Ref: APP/W3330/C/19/3242305

Unit 1, Pipistrelle Cottage, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

Appeal B Ref: APP/W3330/C/19/3242309

Unit 2, Pipistrelle View, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

Appeal C Ref: APP/W3330/C/19/3242311

Unit 3, Pipistrelle Grand, Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Robin Lockyer against enforcement notices issued by Somerset West and Taunton Council ('the notices').
- The enforcement notices, numbered E/0190/10/18, were issued on 15 November 2019.
- The breach of planning control alleged in the notices is failure to comply with condition 07 of a planning permission Ref 10/91/020 granted on 16 July 1991.
- The development to which the permission relates is 'Change of use of barn to 3 holiday units at Barn C, Lower Southey Farm, Smeatharpe as amended by agent's letter and plan received 5th July 1991'.
- The condition in question is No 7 which states that: 'The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times'.
- The notices allege that condition 07 has not been complied with and that the holiday units on the land are, in each case, being used as permanent residential dwellings.

- The requirement of the notices is: Permanently cease the use of the Holiday Unit as a permanent residential dwelling.
 - In each case, the period for compliance with the requirements is 9 months from the date that the Enforcement Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990, as amended. The applications for planning permission deemed to have been made under section 177(5) of the Act also falls to be determined.
-

Decision

Appeal A Ref: APP/W3330/C/19/3242305

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
-

Appeal B Ref: APP/W3330/C/19/3242309

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/W3330/C/19/3242311

3. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

4. The three appeals relate to a breach of the same condition at all three units, which are in the same building. As each notice and its associated cases raise the same issues, I have dealt with them in a single decision letter.
5. In the light of the present circumstances, regarding the Covid-19 pandemic, my site visit was undertaken on the basis of an Access Required Site Visit.

Application for costs

6. An application for costs was made by Somerset West and Taunton Council against Mr Robin Lockyer. This application is the subject of a separate Decision.

Main Issue

7. The main issue is whether condition 07 is reasonable and necessary having regard to the location of the appeal site and access to service provision.

Reasons

8. The three units that are the subject of this appeal were created through the conversion of a barn, by virtue of a 1991 planning permission. They, together with Pipistrelle House and Lower Southey Farm, form a small collection of dwellings some 300m from the small settlement of Smeatharpe. Both parties agree that the units lie

outside any settlement boundary, within the open countryside, as defined in Policy SP1 of the Taunton Deane Core Strategy 2011-2018 (CS).

9. The conversion of rural buildings in the open countryside is supported in principle by CS Policy DM2. Amongst other things, this policy sets out a sequential approach with regards to uses to which a building being converted might be put. This prioritised list runs through various community and business uses, including holiday use, finishing with residential uses. The last of these includes "other residential use", which includes unrestricted use. These, it states, are only supported in exceptional circumstances. The appellant seeks to use the units without complying with condition 07 and, therefore, establish the unrestricted residential use of the units.
10. The appellant states that, since the permission was granted to create the units, changes to national planning policy guidance and permitted development rights¹ mean that CS Policy DM2 is at odds with the terms of the National Planning Policy Framework, (the Framework). However, in my view, the Framework supports community, business and tourism uses as well as the provision of rural housing in certain circumstances², and the approach taken in CS Policy DM2 is consistent with this. Earlier this year an appeal³ against the refusal of an application to lift the same condition on the permission for conversion of this barn, now before me, was dismissed on this site. Little or no evidence has been provided in this appeal that would suggest any change of circumstances since that decision.
11. Whilst sustainability can mean different things in different areas, it is the accessibility of this site to service provision that is relevant to these appeals.
12. Policy A5 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016 (DMP) relates to accessibility. Amongst its terms, it states that residential development should be within walking distance of a defined range of service provision and its justification refers to the importance of regular, daily bus services to nearby towns. Its terms are reflected in those of CS Policy CP6. CS Policy CP1 aims, amongst other things, to reduce the need to travel.
13. There is a short walk along a surfaced footpath from the site to Smeatharpe. Thus, occupants of the dwellings would not be deterred from accessing its village hall and farm shop.
14. They would, however, have to travel to other settlements for the vast majority of services and facilities. Although I did not see a bus stop in Smeatharpe, I am told that buses stop outside the village hall. However, the evidence shows that the bus service to larger towns is intermittent and, as I have no evidence of its timing, I cannot be sure that it would be attractive to provide access to, for example, school and work opportunities elsewhere.
15. There is a limited range of services in Churchinford. During daylight hours and in good weather some residents would be prepared to walk or cycle from the units to the village. However, generally, the lack of footways along the road towards Redlane and the unmade nature of Broom's Lane would be likely to deter others and would not be an attractive proposition in poor weather or at night. Appendix 1 to the appellant's statement shows that the nearest primary school is some distance away and, given the lack of footways and lighting along the roads between it and the site,

¹ The introduction of Class Q of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

² Paragraphs 77-79

³ APP/W3330/W/19/3237811

some of which are narrow and steep, there would be very little likelihood of occupants of the units walking or cycling to it.

16. Permanent residents might use community facilities in the area more than tourists, as they might have more interest in supporting their longevity. However, this would depend on personal preference and, as the three units are small, the benefits to those facilities arising from their small number of occupants would be likely to be limited. Overall, it has not been demonstrated conclusively that the development would enhance or maintain the vitality of rural communities as required by paragraph 78 of the Framework. In any case, given the accessibility issues I refer to above, the scheme would not result in a reduction in the need to travel and occupants of the units would nonetheless be reliant on car travel.
17. I have taken into account the appellant's reference to local housing needs. However, I have not been provided with sufficient evidence of the local need for these types of dwelling, details of rental and or sale prices, nor how they might truly serve a local need. As such, I give little weight to these arguments.
18. For the above reasons, I find that non-compliance with condition 7 would lead to the creation of isolated dwellings in the countryside without exceptional circumstances being demonstrated. This would be contrary to the terms of CS Policies DM2 and SP1 and consistent with the Framework. Furthermore, occupants of the resultant dwellings would be largely reliant on the use of private car transport to access services and facilities, contrary to the terms of DMP Policy A5, CS Policies CP1 and CP6 and the Framework. Therefore, I find that the condition remains reasonable and necessary having regard to the location of the appeal site and access to service provision
19. I do not find that the development conflicts with CS Policies CP8, SD1 or DM1. The first two set out support for development in sustainable locations and a presumption in favour of sustainable development; however, neither weigh against against the development. The latter sets out a range of general requirements that the development broadly accords with.

Other Matters

20. Whilst other authorities might take a different approach to the lifting of holiday occupancy conditions, the Council made its decision on the basis of its development plan policy, which I have found to accord with the Framework. Therefore, this does not outweigh the harm that I have identified.
21. Although the initial reason for the permanent letting of the units was the illness of the appellant, I have been provided with no evidence to show why the units could not be run by another party.

Conclusion

22. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Costs Decision

Site visit made on 20 May 2020 by **Roy**

Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2020

Costs application in relation to Appeal Refs:

**APP/W3330/C/19/3242305,
3242309 and 3242311**

**Unit 1, Pipistrelle Cottage, Pipistrelle View, and Pipistrelle Grand,
Smeatharpe Road, Churchstanton, Taunton, Honiton EX14 9RE**

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Somerset West and Taunton Deane Borough Council for a partial award of costs against Mr Robin Lockyer.
 - The appeal was against an enforcement notice alleging a breach of a condition restricting the use of the units for holiday purposes.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may 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. An application for costs will need to demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The Council's case is based on an earlier proposal by the appellant to occupy the units on a permanent basis without complying with the holiday occupancy condition. That application was refused and was taken to appeal¹, which was recently dismissed (the planning appeal). The appeals against an enforcement notice issued in relation to the unauthorised use of the units on a permanent basis, which is the subject of this costs application, were made on ground (a) only – that is to say, the planning merits of the cases. The Council states that, given the recent dismissal of the planning appeal with no subsequent change in guidance or development plan policy that might lead to a different outcome in these enforcement appeals, they amount to unreasonable behaviour. This has led to unnecessary costs related to the preparation of the questionnaires and Council's statements. Although the Council has not stated whether this is an application for full or partial costs, I have taken it to be the former.

4. In response to the claim, the appellant makes the following points. He appealed the refusal of the planning application and wrote to the Council enquiring whether the matter would be the subject of an enforcement notice.
The Council did not issue notices relating to the breach of the condition until 7 months after its planning decision, by which time his planning appeal was well advanced. He then made his appeals against the notices.

¹ APP/W3330/W/19/3237811

5. Due to the time that had passed between his lodging the planning and enforcement appeals, the Planning Inspectorate was unable to conjoin them. This led to the decision on the planning appeal being made some months before the site visit for the enforcement appeals. Although the Planning Inspectorate thought it would probably be in his best interests to withdraw the appeals, he was unconvinced of this and let them run their course.
6. The PPG sets out examples of actions of a local planning authority that might be unreasonable². Amongst these is a situation where an appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. This is the scenario here.
7. However, the appellant had to lodge his appeal against the enforcement notices as, even were the planning appeal to be allowed, the notices would come into effect. This would not have happened had the Council withdrawn them, but the appellant could not be sure that this would have been the case. Had the appeals been conjoined, the situation where the planning appeal was determined before the enforcement notice appeals would not have arisen. That it was unable to be done was not the fault of the appellant, and by the time the planning appeal decision was made, the enforcement appeals were well advanced.
8. Whilst it was unlikely that a different decision would be made on the enforcement appeals, it was not impossible that this would be the case. Furthermore, whilst he did not make this case, there was always chance that I would use the powers conferred by section 176(3)(b) of the Act and quash the notice.
9. Therefore, despite, at face value, acting in a manner that the PPG suggests might lead to an award of costs, the appellant has put forward significant mitigating reasons. In the light of these, I am of the view that the appellant has not acted unreasonably. In any event, I am told that the Council's case for the enforcement notice appeals, which was contained in a single appeal statement, was the same as that it produced for the planning appeal save for the reference numbers. This was not challenged. The minimal additional work related to the questionnaires, where the answers to its questions and the policies attached would have been very similar if not the same as for the planning appeal, do not amount to unnecessary expense.
10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the Council's claim for costs fails.

Roy Curnow

INSPECTOR

² Paragraph: 053 Reference ID: 16 -053 -20140306 Revision date: 06 03 2014

Site: LIZANNE HOUSE, CHEDDON FITZPAINE ROAD, CHEDDON FITZPAINE, TAUNTON, TA2 8JU

Proposal: Erection of two-storey side extension with habitable accommodation in the roof space at Lizanne House, Cheddon Fitzpaine

Application number: 08/19/041

Reason for refusal: Appeal – Allowed

Decision: Chair Decision



Appeal Decision

Site visit made on 20 October 2020 by **C J Ford BA (Hons) BTP MRTPI**

a person appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/W3330/D/20/3255956 Lizanne House, Cheddon Fitzpaine, Taunton TA2 8JU

- 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 Paul Spencer against the decision of Somerset West and Taunton Council.
 - The application Ref 08/19/0041, dated 7 December 2019, was refused by notice dated 24 April 2020.
 - The development proposed is new 2 storey side extension with attic room to replace existing garage/utility area.
-

Decision

1. The appeal is allowed and planning permission is granted for new 2 storey side extension with attic room to replace existing garage/utility area at Lizanne House, Cheddon Fitzpaine, Taunton TA2 8JU in accordance with the terms of the application Ref: 08/19/0041, dated 7 December 2019 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans; 1500 Rev B, 1000 Rev A, 2000 Rev D, 2100 Rev B and 2500 Rev D.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the host property.

Reasons

3. The appeal property comprises a detached house on a sizeable plot. The main part of the dwelling has a two storey gable fronted form. To the east there is a single storey garage which is linked by a recessed utility area while to the west there is a single storey garden room extension.
4. In the proposed scheme, the existing garage would be replaced by a slightly deeper but considerably wider two storey gable fronted element and the utility area would become a glazed fronted two storey link. There would also be living accommodation provided within the roof of the development. As a consequence, the form and character of the house would fundamentally change and it would become a more substantial dwelling with a distinctive two storey 'twin-wing' design.
5. As noted by the Council, the development would not be subservient to the host property in terms of its significant width, bulk and mass. The ridge would not be set down and the new wing would not be set back. It would therefore conflict with Policy D5 of the Council's 2016 Site Allocations and Development Management Plan (SADMP), which seeks to ensure extensions are subservient in scale and design.
6. However, the appellant has the fallback of erecting an alternative permitted two storey side extension, (permission Ref: 08/16/0016 which has been implemented through the construction of the garden room). In that scheme, the extension would be set further back and would not be as deep at the rear. The ridge height would also be set down a small degree. Nevertheless, the width of the extension would not be too dissimilar from the appeal proposal. Despite its lesser overall bulk and mass, in public views from the front, the form and character of the house would significantly change. It would similarly result in a more substantial, wide, predominantly two storey dwelling but would be lacking a distinctive integrated overall design as illustrated by the paired gables in the appeal proposal.
7. In the proposed scheme, there would be a difference in the style, size and positioning of the windows between the new wing and the existing development. However, such differences also occur to a degree in the permitted scheme.
8. The proposal would therefore conflict with Policy D5 of the SADMP because it would not be subservient to the dwelling. The substantial changes to the form, character and appearance of the dwelling would also conflict with Policy D5 of the SADMP and Policy DM 1 of the Council's 2012 Core Strategy, both of which seek to protect these interests.
9. However, the appeal scheme offers substantive positive benefits over the available fallback in terms of its distinctive overall design. This material consideration is afforded significant weight and leads to a conclusion that the appeal should be determined other than in accordance with the development plan.

Other Matters

10. The eastern site boundary is adjacent to the Cheddon Fitzpaine Conservation Area and the front garden area to the Grade II listed 'The Old Rectory'. As the development would be set back from this boundary and screened by significant

mature vegetation, there would be no harm to the setting of these designated heritage assets.

Conclusion

11. For the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be allowed.

Conditions

12. The standard time limit condition is imposed, as is a condition specifying the approved plans to ensure certainty. A condition requiring matching materials is imposed to ensure the development harmonises with the character and appearance of the existing dwelling.

C J Ford

PLANNING DECISION OFFICER

Site: Land at Allshire, Allshire Lane, Brushford EX16 9JG

Proposal: Outline application for the erection of 1 No. key workers dwelling on land adjacent to the commercial and agricultural buildings

Application number: 3/04/19/007

Reason for refusal: Appeal – Allowed, Costs – Refused

Decision: Delegated Decision – Refused



Appeal Decision

Hearing Held on 10 November 2020 Site visit made on 11 November 2020 **by Mrs H**

Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/W3330/W/20/3256246 Land at Allshire, Allshire Lane, Brushford, Dulverton EX16 9JG

- 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 Mr Geoffrey Brown against the decision of Somerset West and Taunton Council.
 - The application Ref 3/04/19/007, dated 14 October 2019, was refused by notice dated 24 January 2020.
 - The development proposed is to construct a key workers dwelling on land adjacent to the existing commercial and agricultural buildings to support the essential and functional needs of the businesses occupying the land.
-

Decision

1. The appeal is allowed and outline planning permission is granted for construction of a key workers dwelling on land adjacent to the existing commercial and agricultural buildings to support the essential and functional needs of the businesses occupying the land at Allshire, Allshire Lane, Brushford, Dulverton, EX16 9JG, in accordance with the terms of the application, Ref 3/04/19/007, dated 14 October 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. Somerset West and Taunton Council was formed on 1 April 2019 following a merger. Provisions within the relevant regulations¹ allow for any plan prepared by one of the merging authorities to be treated as if *“it had been prepared and, if so required, published by the single tier council for the whole or such part of*

its area as corresponds to the area to which the particular plan, scheme, statement or strategy relates". As such, the status of the West Somerset Local Plan to 2032 (adopted 2016) (Local Plan) has not changed.

3. The appeal proposal was made in outline form with all matters reserved for future consideration.
4. Following the hearing, further clarification was provided by the appellant in respect of livestock numbers and the use of CCTV equipment for calving.

Application for Costs

5. An application for costs was made by Mr Geoffrey Brown against Somerset West and Taunton Council. This application is the subject of a separate Decision.

¹ Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008

Main Issue

6. The main issue is whether the location and need for the dwelling accords with local policies that seek to limit development in the countryside in order to protect its character and minimise the need to travel.

Reasons

7. The proposal is for a dwelling at the appeal site to serve the businesses owned by the appellant, one of which is a farm (beef and lamb production) and the other of which trades in farm machinery. Agricultural contracting is a subsidiary part of the latter business, undertaken by the appellant and his employees on other farms utilising business-owned machinery. The farm extends to around 140 hectares, with approximately 55 hectares based at Allshire and two outlying blocks of owned grazing land forming the remainder.
8. The farm and farm machinery sales businesses share the same entrance, access lane and yard. The use of the numerous widespan agricultural buildings also appears to overlap to a degree. It is proposed that the dwelling would be sited on a small grass paddock adjacent to the main entrance and close to the largest adjoining machinery storage buildings.
9. The site is approximately 1.6 kilometres from the small settlement of East Anstey and approximately 4.5 kilometres from the village of Brushford. It was agreed by the parties that whilst the site is situated within the context of the farm and business buildings, and some outlying dwellings in Allshire Lane (approximately 400 metres away), it is otherwise in an isolated, open countryside position.
10. Local Plan Policy SD1 is an overarching policy enshrining the presumption in favour of sustainable development. Policy SC1 sets the settlement hierarchy for the Plan area and seeks to direct the greatest proportion of new residential growth in the main settlement of Minehead/Alcombe and the rural service centres, Watchen and Williton. Limited development is expected to occur in the primary villages, including Kilve and Washford. There are a number of secondary villages, including Brushford, where small scale development can be permitted if it can be demonstrated to contribute to wider sustainability benefits for the area.
11. Given the rural context of the site, the proposal for a dwelling does not accord with Local Plan Policy SC1. In such circumstances, proposals are to be considered under Policy OC1 for development in the open countryside.

12. Policy OC1 states that development is not generally appropriate on land outside of existing settlements unless in exceptional circumstances. Relevant to the appeal proposal are the criteria which set out that rural workers dwellings will only be permitted where i) the location must be essential for a rural worker (e.g. agricultural, forestry, horticultural, equestrian or hunting employment), or ii) where the proposal is a new-build to benefit an existing employment activity already established in the area that could not be easily accommodated within or adjoining a nearby named settlement. The parties agreed that though it was more permissive, Local Plan Policy OC1 was in broad conformity with paragraph 79 of the National Planning Policy Framework ('the Framework').
13. The key factors promoted by the appellant as the reason for seeking a rural worker's dwelling on site included the need to be within 'sight and sound' of the livestock, for the convenience of undertaking farm labour and to provide security for farm machinery, the total financial value of which is considerable. Evidence about the theft of a trailer from the yard was discussed at the hearing and other similar incidences were also explored in more detail. Furthermore, the increased out-of-hours sales and deliveries/collections from the yard (owing to lorries arriving from international locations) was provided as another reason for needing someone on site at all times.
14. The appellant's evidence included a 'standard man day calculation'⁴ for the needs of the farming enterprise. The Council indicated at the hearing that it did not dispute the alleged demand for 4.33 labour units. The main farm employee undertakes a large proportion of this work, assisted by the appellant and other contractors as necessary. No such similar evidence was provided for the farm machinery business, although the main farm employee also presently provides supervision for the farm machinery business during the working day.
15. During the hearing, it was made clear that both the appellant and his main fulltime employee lived away from the site and that it typically took them between 15 to 25 minutes to drive to the site. This often resulted in a lot of travel to and from the site when occasions arose during calving which occurs regularly throughout the year rather than during a concentrated period, i.e. Spring. It was also highlighted that the British Blue breed of cow produced at the farm had the highest incidences of caesarean delivery or other such complications owing to their double-muscle structure. The evidence appears to show that 93 births occurred in 2019 and 103 in the year 2017. As such, I anticipate that the number of car movements associated with calving duties and aftercare, in addition to typical labour requirements at the farm, is substantial.
16. The appellant also indicated that since 2018, the business has diversified into producing the calves over a longer period. These changes are set against a large reduction in the number of store lambs produced at the site. Though change to the volume of store lamb production was not anticipated to be a permanent change, recent price rises had made this aspect of the business economically unviable at the present time.
17. During the hearing, detailed accounts information for both businesses was provided for 2017 and 2019. These accounts also provided a snapshot of accounts information for both 2016 and 2018. Both businesses have clearly been profitable between 2016

⁴ Standard man day calculation taken from the 'Farm Management Pocketbook' 49th Edition - 2019 ³
APP/H3320/A/14/2224266 dated 20 January 2015

and 2019 with only one anomaly for the farm in the 2019 financial year. This anomaly is a result of the retention of livestock for a longer period. The effects of this elongated production process are anticipated to be outweighed by enhanced profitability in the current financial year and going forward. Furthermore, planning permission was secured in 2019 for two additional widespan agricultural buildings, both of which have been constructed. This indicates that recent investments have been made to secure the longevity of the farming enterprise.

18. Whether there had been any other changes since an earlier dismissal of an appeal on the site³ also formed part of the hearing discussion. It was highlighted that since 2015, poultry farming was no longer undertaken and that the existing poultry units are sublet. Additionally, the bungalow located at Allshires Lane, whilst not being geographically distant from the site, was still unavailable due to it being occupied by longstanding tenants. That this unavailable dwelling would still be beyond 'sight and sound' of the farm was another reason for seeking the alternative dwelling based at the shared entrance.

² Standard man day calculation taken from the 'Farm Management Pocketbook' 49th Edition - 2019

³ APP/H3320/A/14/2224266 dated 20 January 2015

19. In terms of security, I heard that the Council considered the farm machinery sales to be akin to a car dealership in a suburban industrial estate that should not result in a need for a dwelling in addition to other typical security measures. During my site visit, I noted the isolated rural location of the site and considered that it was unlikely that the general presence of individuals could act as a deterrent as would be more likely in a suburban setting. I also noted the appellant's use of electronic security gates, fencing and a ditch landscape feature around the main yard for security, but that there were limited other security features that could be installed without harm to the character and appearance of the area.
20. The Council was asked to provide a view as to the necessity for a 'temporary' dwelling as set out in Policy OC1. In this case, given the longevity of the businesses on site and their financial stability, the Council did not consider that such a temporary restriction would need to apply.
21. Drawing together this main issue, it became clearer throughout the hearing and subsequently at the appeal site visit, that whilst the Allshires farming base is compact, there is sufficient labour and livestock welfare justification for a dwelling to be based there, even if an adjustment is made to account for the reduction in store lambs. The additional convenience, security and business growth aspirations add to the justification for a dwelling to be based at the shared entrance to serve the intertwined needs of both businesses.
22. Whilst the dwelling would be relatively isolated from local settlements and facilities and therefore, unlikely to enable future occupiers to access a range of sustainable travel modes, it would at least be located to minimise the need for regular travel to and from work by an employee of both businesses. The dwelling could provide the convenience and stability for the businesses to continue to provide local employment and wider economic benefits.
23. As such, having further regard to the above, I consider that the proposal complies with, in particular, Policy OC1 of the Local Plan. For similar reasons, it would also comply with paragraph 79 of the Framework.

Other Matters

24. I note the agreement between the parties in respect of matters in relation to the impact on highways, flood risk and protection of best and most versatile agricultural land. The absence of harm is a neutral factor in the overall balance.

Conditions

25. I have considered the conditions in light of paragraph 55 of the Framework and the Planning Practice Guidance. I have undertaken some minor editing in the interests of precision and clarity.
26. Given the outline nature of the proposal, standard conditions are required to seek the timely submission of reserved matters and implementation of the approved development. The standard plans condition is also required to define the extent of the site location area.
27. Whilst the Council suggested a condition in relation to landscaping, this would be addressed by the future reserved matters application.
28. Owing to the restrictive policies relating to residential development in the countryside, it is necessary to impose a condition restricting the occupation of the dwelling to one associated with the linked businesses. Whilst the Council indicated a preference for the use of a planning obligation for this purpose, the Framework indicates that they should only be used where it is not possible to address unacceptable impacts through a planning condition. I consider that a planning condition would adequately restrict the occupation of a dwelling and have framed such a condition to apply to the circumstances of the case.
29. It is also necessary to seek the implementation of adequate drainage infrastructure to serve the development by way of a planning condition.

Conclusion

For the reasons given above, I conclude that the appeal should be allowed.

Hollie Nicholls

INSPECTOR



Costs Decision

Hearing Held on 10 November 2020 Site visit made on 11 November 2020 **by Mrs H**

Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Costs application in relation to Appeal Ref: **APP/W3330/W/20/3256246 Land at Allshire, Allshire Lane, Brushford, Dulverton EX16 9JG**

- 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 Geoffrey Brown for a full award of costs against Somerset West Taunton Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for construction of a key workers dwelling on land adjacent to the existing commercial and agricultural buildings to support the essential and functional needs of the businesses occupying the land.
-

Decision

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

The submissions for Mr Geoffrey Brown

2. The initial application was made in writing and the response to the Council was made orally at the hearing. In brief, the appellant is of the view that the Council failed to handle the appeal application in a proactive manner and determined it hastily, without first seeking additional information that may have otherwise avoided the submission of the appeal.

The response by Somerset West and Taunton Council

3. The Council provided their response to the applicant's written application orally at the hearing. Essentially, the Council does not consider that it acted rashly or failed to act proactively. Whilst the Council accepts that it has apportioned differing degrees of weight to considerations put forward by the appellant, it does not consider that unreasonable behaviour has been demonstrated during the processing of the appeal application or the appeal itself.

Reasons

4. The Planning Practice Guidance (PPG) advises that costs may 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.
5. The guidance makes it clear that a local planning authority might be at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal

- at appeal and/or makes vague generalised assertions about a proposal's impact which are unsupported by objective analysis. Similarly, local planning authorities may be at risk of an award of costs by preventing or delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
6. The appellant's submission was made on the basis of 'substantial evidence' to prove the needs for the dwelling. The appellant's original submission was deficit of a number of key facts and evidence that set out the justification for the rural worker's dwelling. Having previously been through application and appeal processes for a similar proposal, the level of information necessary to demonstrate an essential need for a rural worker's dwelling should not have come as a surprise.
 7. It does not appear that the Council accepted the appellant's offer of a discussion about the need for any supplementary evidence. Though the appeal application was subject of an extension of time that provided an additional 10 days for the Council to deliberate its decision, no further evidence was before the Council at this point than in the early stages of the application process.
 8. Whilst I have agreed with the appellant, his case was supplemented by late evidence during the hearing which was ultimately determinative. Though there had been opportunities to include such evidence as part of the original application, even on a commercially confidential basis, or at least as part of the appeal statement of case, it was submitted at a particularly late juncture and was essential for me to reach the conclusion that I did. Whilst the role of the Council is to act proactively, there is also a need for participants to consider the comprehensiveness of their evidence base and the typical processing timescales and pressures to determine applications that also apply.
 9. Consequently, it is not clear to me that the Council has prevented or delayed development that should have been permitted on the basis of the evidence available to it at that time. Therefore, the appeal could not have been avoided and the appellant has not been put to any wasted expense.
 10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that an award of costs is not justified.

Hollie Nicholls

INSPECTOR