APPEAL DECISIONS – 18 MARCH 2021

Site: **75 UPPER HOLWAY ROAD, TAUNTON, TA1 2QA**

Proposal: Erection of fence with bicycle storage area to the front of 75 Upper Holway Road, Taunton (retention of works already undertaken)

Application number: 38/20/0216

Reason for refusal: Appeal – Dismissed

Original Decision: Delegated Decision – Refusal

The Planning Inspectorate

Appeal Decision

Site visit made on 26 January 2021 **by C J Ford BA (Hons) BTP MRTPI**

a person appointed by the Secretary of State

Decision date: 25 February 2021

Appeal Ref: APP/W3330/D/20/3260992 75 Upper Holway Road, Taunton TA1 2QA

- 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 Mike Gammon against the decision of Somerset West and Taunton Council.
- The application Ref 38/20/0216, dated 30 June 2020, was refused by notice dated 11 September 2020.
- The development is new fence to front along with bicycle storage area.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The original planning application was made retrospectively. The appeal has therefore been considered on the same retrospective basis.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site forms part of a residential estate and occupies a prominent corner plot position within the street scene. It appears the dwellings were originally laid out with open plan, mainly grassed front garden areas, similar in character to the neighbouring highway verges and street corners. However, over time, the distinction between the boundaries of the front garden areas and the public amenity space have become more clearly defined.

5. In most cases, this is the result of very low 'knee rail' perimeter wooden fencing and the planting of shrubs or trees, boundary treatments which are broadly sympathetic to the original open plan design. Examples of taller wooden fencing or other such treatments are far less common. However, where they do exist, they have generally not exceeded a height of approximately 1m. (The fence which exceeds this height at No 106 Upper Holway Road, opposite the appeal site, does not benefit from planning permission and so can be given very little weight in the determination of this appeal). Therefore, despite the increased boundary definition described above, the properties have retained fairly open frontages and this openness is an important part of the character of the area.

6. The submitted plans indicate that for the most part the appeal fence has a height of approximately 1.35m. However, at the north-west corner it rises to around 1.5m. Consequently, it is between 35% and 50% taller than the common height of other erected boundary treatments found in the locality. Given the prominent nature of the site, the resulting greater degree of enclosure is plainly apparent and it has a significant harmful visual impact when observed amongst the characteristic fairly open frontages.

7. The appellant has referred to several benefits derived from the height of the fence as erected when having regard to the site's close proximity to a junction, the pavement and a bus stop. This includes security, privacy, safety and the mitigation of noise, light and air pollution. However, the benefits over an erected boundary treatment of up to 1m in height, consistent with others found in the area, would only be marginal in these respects. Furthermore, the submitted plans show the planting of leylandii to infill the gaps amongst the existing trees adjacent to the front boundary. Once mature, the resulting hedgerow will offer more tangible benefits in relation to the identified issues than the fence. The increased visibility of this soft landscaping would also have a positive effect on the street scene.

8. Consequently, the suggested benefits do not justify or outweigh the identified harm of the appeal development. Furthermore, while the fence has been constructed to a professional standard and it has received some positive comments from local people, it must be duly considered against planning policy.

9. In light of the above, it is concluded the development has an unacceptably harmful effect on the character and appearance of the area. It conflicts with Policy DM 1 of the Council's Adopted Core Strategy 2011-2028 which, amongst other things, seeks to ensure development does not unacceptably harm the character and appearance of any settlement or street scene.

Conclusion

10. For the reasons given above and having had regard to all other matters raised, the appeal is dismissed.

C J Ford
PLANNING DECISION OFFICER

Site: **FAIRMEAD, STATHE ROAD, STATHE, BRIDGWATER, TA7 0JJ**

Proposal: Replacement of rear conservatory with erection of a two storey extension at Fairmead, Stathe Road, Stathe, Burrowbridge (amended scheme to 51/19/0018) (retention of part works already undertaken)

Application number: 51/20/0007

Reason for refusal: Appeal – Allowed

Original Decision: Delegated Decision – Refusal

The Planning Inspectorate

Appeal Decision

Site visit made on 26 January 2021 **by C J Ford BA (Hons) BTP MRTPI**

a person appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/W3330/D/20/3261888 Fairmead, Stathe Road, Stathe, Bridgwater TA7 0JJ

- 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 Ian Webb against the decision of Somerset West and Taunton Council.
- The application Ref 51/20/0007, dated 23 July 2020, was refused by notice dated 23 September 2020.
- The development is extend work started for a single storey extension commenced under approved application (51/19/0018) to create a two storey extension.

Decision

1. The appeal is allowed and planning permission is granted for a two storey extension at Fairmead, Stathe Road, Stathe, Bridgwater TA7 0JJ in accordance with the terms of the application Ref: 51/20/0007, dated 23 July 2020 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; Location Plan, Site Plan Existing, Site Plan Proposed and Drawing Nos 005 Rev A, 006 Rev B, 007 Rev B, 008 Rev A and 009 Rev B.

3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall be in accordance with those specified in the application form.

Preliminary Matters

2. At the time of the site visit the blockwork of the proposed development had been erected up to roof level. However, the ground floor works are part of a previously permitted scheme in relation to a single storey rear extension, (Council Ref: 51/19/0018). Also, I have used a simplified version of the description of the development in the decision above for the sake of conciseness.

Main Issue

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

Reasons

4. The appeal property is a traditional brick built two storey cottage. Although its front elevation is fairly wide, the gable ended flanks reveal it is particularly shallow. It has previously been enlarged through a rendered two storey front extension and a timber clad single storey side extension. There is also a rendered single storey lean-to element running along the front of the house which links the two extensions.

5. The dwelling is sited within a large plot which is generally secluded in relation to neighbours and the wider countryside. Public views are limited to those available from an unsurfaced footpath to the north of the site boundary.

6. The appeal proposal involves a two storey rear extension that would be rendered. It spans the full width and is deeper than the original brick built part of the house. The tiled roof would have a twin hipped form that would connect to the main roof and be no higher than the existing ridge.

7. Policy D5 of the Council's 2016 Site Allocations and Development Management Plan supports extensions to dwellings provided they do not harm the form and character of the dwelling, and are subservient to it in scale and design. Due to its large scale and massing it is considered the two storey extension fails to be subservient to the dwelling and harms its form and character. Although the effect on the wider rural area is minimal owing to the secluded nature of the site, it nevertheless conflicts with Policy D5.

8. However, the appellant has the fallback of the permitted single storey rear extension which, excluding the roof, is essentially the same as the ground floor to the appeal proposal. It would therefore be equally wide and deep but have a very large and uncharacteristic flat roof form. Furthermore, the approved scheme enables the extension roof to be used as a balcony. There would be an external staircase on one side and projecting above the roof would be a perimeter balustrade and a log burner flue. The placement of seating and other domestic paraphernalia on the balcony can also be expected.

9. Consequently, the fallback would also vastly change the form and character of the dwelling at the rear ground and first floor levels. Despite the appeal proposal's additional bulk and mass, it is considered the roof form and the cohesive form of a simple two storey extension would more sympathetically integrate with the dwelling's form and character than the fallback. 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 appellant has queried the Community Infrastructure Levy required by the Council. However, that is a matter to be agreed between the parties.

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 the external materials to be as set out in the application form, (as opposed to simply matching the existing dwelling as suggested by the Council) is imposed to ensure the walls are rendered to purposely contrast with the original brick built part of the dwelling.

C J Ford

PLANNING DECISION OFFICER

Site: **Lawsons Burgage, SHURTON LANE, STOGURSEY, Bridgwater, TA5 1QL**

Proposal: Alleged unauthorised mobile homes and caravans on site

Application number: ECC/EN/19/00038

Reason for refusal: Appeal – Allowed
Costs - Dismissed

Original Decision: Enforcement Case

The Planning Inspectorate

Appeal Decision

Hearing Held on 8 February 2021 Site visit made on 11 February 2021 **by P N Jarratt**

BA DipTP MRTPI

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

Decision date: 2 March 2021

Appeal Ref: APP/W3330/C/20/3249313 Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Terry Buller against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice was issued on 11 February 2020.
- The breach of planning control as alleged in the notice is the use of the land for the siting of a mobile home together with the porch and decking and its use as permanent residential accommodation.
- The requirements of the notice are:
  1 Permanently cease the use of the land for the stationing of a residential mobile home.
  2 Remove the mobile home from the land.
  3 Remove the porch and decking attached to the mobile home and remove all materials formerly comprising the porch and decking from the land. 4 Remove all domestic items and paraphernalia from the land.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the

Act as amended for the development already carried out, namely the use of the land at Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL, as shown on the plan attached to the notice, for the siting of a mobile home together with the porch and decking and its use as temporary residential accommodation subject to the following conditions:

i) The siting and occupation of the mobile home dwelling hereby permitted is limited to a period of three years from the date of this permission. After a period of three years from the date of this permission the mobile home, porch and decking and all domestic paraphernalia associated with the mobile home shall be removed from the site.

ii) The occupation of the temporary dwelling shall be limited to a person solely or mainly working at the Quantock Steamers business at Lawsons Burgage, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.

Procedural Matters

2. In view of Covid restrictions, a virtual hearing was held.

3. For the purposes of the ground (a) appeal the appellant has requested that permission be granted for a limited period of three years for the unauthorised development to provide time for more permanent live/work arrangements to be achieved which would replace the temporary mobile home. I have therefore considered the appeal on this basis.

4. An application for an award of costs was made by the appellant against the Council. This is the subject of a separate decision.

The site and relevant planning history

5. The site is located in open countryside just to the north of the village of Stogursey, identified as a Primary Village in Policy SC1(2) of the West Somerset Local Plan to 2032. Sturton Lane runs along the east side of the site.

6. A mobile home of 12.7 x 6.5m is situated to the south of a former agricultural building currently used for the manufacture of sweet and savoury steamed puddings. The mobile home is occupied by the appellant and his family who sold their home in Stogursey and invested their funds in relocating and expanding their busines, Quantock Steamers, on the appeal site. The former agricultural building is used for general and vehicle storage and as kitchens for the steam pudding preparation process, including toilets and washing facilities. Products are retailed at weekend events from a trailer.

7. The planning history of the site includes permission for the agricultural building in 2008; permission for storage of agricultural vehicles and repair and use as automotive workshop in 2012; refusal of prior approval application for conversion of light industrial building to dwelling in 2018; resubmission and refusal of the same in 2018 and appeal dismissed (APP/H3320/W/3217536); retrospective application for siting of mobile home for manager's residential use refused 2019 and resubmission of the same in 2019 (Ref 3/32/19/034).

8. Following the most recent refusal and the appointment of the current agent a detailed business and planning appraisal was prepared which was intended to accompany a revised planning application. These were discussed prior to submission with the planning officer in January 2020 but the enforcement notice dated 11 February 2020 was issued.

The appeal on ground (e)

9. An appeal on this ground is that the notice was not properly served. The appellant states that although the notice is dated 11 February 2020, it was not found in the box at the entrance of the premises until 17 March. This is confirmed in a statutory declaration by Mrs Buller dated 12 November 2020. She adds that the notice indicated that a copy was served on the appellant at his former house in Cannington although this was sold in 2011. Mrs Buller says it was distressing that the notice was received whilst the planning consultant was engaged in pre-application discussions with the planning officer and by the Council refusing to withdraw the notice or hold it in abeyance, thereby leaving little time to respond to the appeal.

10. The Council chose not to serve a Planning Contravention Notice as they considered that the breach and the site location were clear. The Council referred to Land Registry records which indicated that Mr Terry Buller at 6 East Street, Cannington was the registered freeholder of the appeal site. The Council state that the notice was posted through the letter box at this address and at the appeal site on 11 February 2020 by two officers of the Council.

11. It is evident that the appellant did not receive a copy of the notice until 17 March and I note that the appellant states that the Land Registry records that the Cannington house was sold in 2011. The Council has not provided any officer notes or photographs confirming that a copy of the notice was duly posted at the appeal site on 11 February.

12. On the basis of the evidence before me, the notice was not served effectively in that there was a delay before its receipt by the appellant. In reaching this conclusion I attach considerable weight to Mrs Buller's statutory declaration. However, in order for the appeal on this ground to be successful it is necessary to show that a person with an interest in the land has been 'substantially prejudiced'. The appellant confirmed at the hearing that although being distressed by the delay in receiving the notice, this was not 'substantial prejudice' in the context of a ground (e) appeal. It was further confirmed that there were no other persons with an interest in the land upon whom the notice should have been served.

13. Consequently, although the appellant may have been distressed by the notice not being served in the manner it should have been, the fact that a valid appeal has been made leads me to conclude that there has not been substantial prejudice and the appeal on ground (e) therefore fails.

The appeal on ground (a)

14. An appeal on this ground is that planning permission should be granted for what is alleged in the notice.

15. The reasons for refusal of the 2017 and 2019 applications and the reasons for issuing the enforcement notice refer to conflict with Policies OC1, SC1, EC1 and EC6 of the West Somerset Local Plan to 2032 and also to the National Planning Policy Framework (the Framework) at paragraphs 78 and 79. The Council consider that the development represents unsustainable development in the open countryside

where the location of the mobile home is not well related to the services and facilities of the settlement.

16. The Framework at paragraph 79 seeks to avoid isolated homes in the countryside except where particular circumstances apply including where there is an essential need for a rural worker to live permanently at or near their place of work; or where the development would re-use redundant or disused buildings and enhance its immediate setting.

17. Policy OC1 reflects national policy and seeks to restrict development outside existing settlements except in exceptional circumstances. The policy permits development in five categories including where 'such a location is essential for a rural worker engaged in eg: agricultural, forestry, horticulture, equestrian or hunting employment'. This is a list of examples of rural worker employment types and the policy does not indicate that this is an exclusive list, only examples of work engagement, similar to the approach of the Framework.

    Policy OC1 also permits development through the conversion of existing, traditionally constructed buildings in association with employment or tourism purposes as part of a work/live development, although the former agricultural building on site is not of traditional construction. The policy requires applications for dwellings to be subject to a functional and economic test and consideration being given to a permission being granted initially on a temporary basis.

18. In terms of the functional test, the appellant states that it is necessary to have a person to manage the steaming process overnight and Mrs Buller confirmed that there could be 5 or 6 production cycles per day in a 72 pot steamer and requiring overnight attendance in two and a half hour sessions on average three times per week. Whilst an overnight shift by a person appears to be required as part of the production process it does not follow that such a person needs to live on the premises. Additionally, the situation in pudding production is very different to that pertaining to emergencies that could arise, for example, where the welfare of livestock is affected. The potential for losses through power cuts or the security of the premises are not adequate justifications for a dwelling on site. I also note that the Bullers sold their house in Stogursey to invest in their business and there is no evidence to indicate that there are no other suitable dwellings in the locality that could accommodate the appellant.

19. The submitted business appraisal and financial information indicate that the business has expanded since it was established in 2017 and to 2019, and has won a supply contract with 'Somerset Larder' with a total manufacturing capacity requirement to 1400 puddings per week which would lead to production at 12-15 hours per day for up to 5 days. The submitted accounts do not show any profits except for the half year to September 2019, largely due to the investment costs associated with the modernisation of the premises, the cost of equipment and other one-off costs. The effect of Covid-19 and the lockdown has significantly affected the business with the main points of sale through country fairs and shows not taking place. Notwithstanding this, the business appears to have been planned on a sound financial basis which under normal circumstances indicates that there would be a reasonable expectation of potential future financial viability. It is accepted that the appellant has requested that a temporary permission be granted for the mobile home and this would normally allow a period of time to review the financial aspects of the business.

20. Policy SC1 identifies the hierarchy of settlements where development will be acceptable. It also permits development in close proximity (within 50 metres) of the contiguous built-up boundary of certain settlements (including Stogursey which is identified as a primary village) subject a number of safeguards. These safeguards require development to be well-related to existing essential services and social facilities within the settlement which should have safe and easy pedestrian access. The Council indicate that the site is some 230m from Stogursey although the appellant refers to the entrance to the appeal site from the lane being 143m. The lane is narrow and does not have any lighting, like most other country lanes in Somerset, but I do not consider the distance from the services in the village to be at an unreasonable walking distance.

    Nevertheless the location of the appeal site is in conflict with Policy SC1.

21. Policy EC6 supports new build or conversion of existing buildings to work/live developments. Whilst this does not apply to the stationing of a mobile home, it would be relevant in the context of the appellant's request for a three year temporary permission and his intentions for the conversion of the former agricultural building. The policy is subject to the employment and residential elements being integrated; there being no adverse impact on employment elsewhere; and there being no significant traffic impact. New build will only be allowed where an open countryside location is essential to the business and cannot be provided elsewhere. However, as no new build is involved, an essential need does not have to be demonstrated.

22. The purpose of the policy is to encourage the development of viable work/live accommodation that remains in the long term and the wording of the policy is quite clear. I note however that the policy justification indicates that work/live accommodation should, wherever possible, be sited within or adjacent to existing settlements, which is not the case here, but non-compliant locations are not necessarily rejected by the policy, otherwise the wording of the policy would have specifically stated that to be the case. Additionally, although there are no proposals for a conversion scheme before me, Mr Lawrey at the hearing considered that a work/live unit should look like a house with a ground floor work use. However, the policy does not specify the form that a work/live unit should take.

23. Although policy EC6 is not relevant to the development alleged in the notice, as there are no adverse impacts on employment elsewhere, or traffic implications arising, the principle of the conversion of the former agricultural building to a work/live unit is not expressly excluded by the policy wording.

Fallback Position

24. A fallback position is an important material consideration[1] on the merits of any deemed planning application of which there must be a realistic and not merely theoretical prospect. The appellant must show that a different use is likely to be carried out on the balance of probability and there are no insuperable practical drawbacks to its implementation. The question is whether the fallback would take place and be less desirable than that for which permission is sought.

25. It is contended by the appellant that although the prior approval route for the conversion of part of the former agricultural building is not available, there is a very realistic prospect that planning permission can be obtained for the Buller's original intention to create a manager's dwelling in part of the existing building.

[1] Mansell v Tonbridge & Malling BC [2017] EWCA Civ 1314

Whilst this is a possibility, it is nevertheless speculation until such time as the Council has such an application before them to determine.

26. A second fallback position is also considered to be possible. Should the business fail and the building become redundant then the whole building could be converted to a dwelling in accordance with paragraph 97 of the Framework. This indicates that one of the exceptions to the development of isolated homes in the countryside is where it would involve the re-use of redundant or disused buildings and enhance its immediate setting.

27. The effort by the appellant to seek prior approval for a partial conversion of the former agricultural building and the subsequent attempt to negotiate an acceptable solution with the Council indicates a serious intention to achieve lawful residency on the site. However, the Council disputes that there is any fallback position as no planning permission exists for residential accommodation on the appeal site and any proposal for a dwelling would be contrary to policy on sustainability grounds. I agree with this assessment insomuch as the prospect of planning permission is only theoretical as partial or complete conversion of the building cannot lawfully take place without such a permission. Whether it would be the case that sustainability considerations outweigh the conformity of future conversion proposals when assessed against Policy EC6 would be a matter for the Council to determine in the event such an application for the conversion of the building is made.

28. Whilst I accept that it is more than probable that the appellant would pursue one of these options, neither course of action would cause more planning harm than the continuation of the siting of the mobile home for residential purposes, which is the subject of the allegation. I therefore attach limited weight to the appellant's claimed fallback position.

The Planning Balance

29. The appellant is seeking only a temporary permission for the mobile home pending the preparation and submission of an application for the conversion of the building to a work/live unit, which he considers will take some 18 months to prepare and submit. Whether such an application would be successful will be for the Council to determine at the appropriate time.

30. The existing siting of the mobile home is contrary to Policies OC1 and SC1 of the Local Plan. Although the term 'rural worker' in paragraph 79 of the Framework and in Policy OC1 is not defined, it is unlikely for it be interpreted so broadly so as to incorporate the occupation of the appellant. Nevertheless, the business is a small manufacturing business that has employed part-time workers and which makes a contribution to the local economy. There is no essential need for a person to reside permanently on the site and the longer term financial viability of the business has yet to be demonstrated, partly due to the Covid-19 pandemic.

31. The appellant fears for the future of the business if it cannot be supported on site by accommodation and whilst there are no proposals before me for the conversion of the former agricultural building, it appears that in principle a work/live conversion of that building is not expressly excluded by Policy EC6, although this would be for the Council to determine taking into account all relevant policies and other material considerations.

32. On balance, there is a case for the granting of a three year temporary planning permission for the use of the land for the stationing of the mobile home to enable the appellant to progress with and submit a planning application for the conversion of the

former agricultural building to work/live premises. The appellant considers that it would take about 18 months or so for approval to be obtained for conversion and occupation of a work/live development. A three year permission should therefore be more than adequate to achieve this, or in the event that no permission is forthcoming, for alternative off-site accommodation arrangements to be made. In order for progress to be achieved, I therefore intend to grant planning permission subject to conditions restricting permission to be for a period of three years and to an occupancy condition.

33. The Council's proposed condition regarding foul and surface water details is unnecessary as the premises are connected to a digester system serving the mobile home and the building for foul drainage, with surface water running to a soakaway. The appellant advises that these arrangements have been approved by Building Control.

34. The appeal on this ground succeeds.

Conclusions

35. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (g) does not therefore need to be considered.

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Clive Miller MBA BA(Hons) DipTP	Director, Clive Miller Planning Ltd
Helen Lazenby BSc (Hons) Dip TP MRTPI	Director, Clive Miller Planning Ltd
Mike Warren BIACS FEDI	Director, Mike Warren Consultancy
Mrs Anne Buller	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Alex Lawrey BA (Hons) MCD L-RTPI	Specialist (Planning) Communications

INTERESTED PERSONS:
None

The Planning Inspectorate

Costs Decision

Hearing Held on 8 February 2021 Site visit made on 11 February 2021 **by P N Jarratt BA DipTP MRTPI**

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

Decision date: 2 March 2021

Costs application in relation to Appeal Ref: APP/W3330/C/20/3249313 Lawsons Burgess, Shurton Lane, Stogursey, Somerset, TA5 1QL

- 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 Mr Terry Buller for a full award of costs against Somerset West and Taunton Council
- The hearing was in connection with an appeal against an enforcement notice alleging the use of land for the siting of a mobile home together with porch and decking and its use as permanent residential accommodation.

Decision

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

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. It is the applicant's case that the manner in which the enforcement notice was served amounts to unreasonable behaviour by the Council. It was served whilst active pre-application discussions were in train which were cut short due to the notice and deprived the applicant of the opportunity to submit a revised application. At the hearing the Council acknowledged that there should have been better communication by the officer concerned which was partly due to remote working, but the notice was served correctly and after the agent was advised that a notice was being prepared. The serving of the notice does not stop discussions on a new application for the conversion of the main building to a live-work unit but delays in serving the notice could run down the clock in terms of the ability to serve a notice. Two applications for the retention of the mobile home have been refused and it is correct for the Council to serve a notice where there has been an identified breach of control.

4. Whilst the applicant has attempted to resolve the planning issues and submitted applications and an appeal that have been unsuccessful, it is nevertheless the case that there has been a clear breach of planning control. Although the applicant may have concluded that his agent's discussions with local authority officers have been misleading, these are matters more properly dealt with under the Council's own complaints procedure, rather than through an application for a costs award. The serving of the notice was expedient and does not constitute unreasonable behaviour in the context of the Guidance. The applicant has not been deprived of the opportunity to submit a further application as this is a matter entirely under the applicant's control.

5. The applicant also considers that the Council failed to give due weight to the fallback position as a material planning consideration despite the Mansell[1] case being clearly referenced in the evidence. The applicant contends that the Council has not properly considered the weight to be given to the live/work potential of the site and that these matters may well have been drawn out fully during the pre-application process. The applicant also claims that the Council has failed to acknowledge that a live/work conversion of an existing building will conform with Policy EC6 and that it is only new build live/work units in the countryside which need to demonstrate an essential need for a rural location.

6. In respect of the fallback position, the Council consider it is unclear as under Class PA of the GPDO the whole building would need to be converted, as concluded by the Inspector in an earlier appeal decision, and the industrial element would be removed thereby removing the need for mobile home. The Mansell case has little or no relevance to the serving of the notice regarding a mobile home.

7. I am satisfied that the Council has not behaved unreasonably regarding the fallback argument presented by the applicant. The Council has not ignored the argument but reached conclusions different to those sought by the appellant, which they are perfectly entitled to do.

8. Whilst Policy EC6 is relevant in the context of the longer term intentions of the applicant for the conversion of a former agricultural building on the site, it is the stationing of a mobile home that is the allegation in the notice and this is what the Council has addressed and has considered planning policies relevant to that development. In any event, the Council has not disregarded the applicant's position in respect of Policy EC6 but reached their own conclusion on the facts before them.

Conclusions

9. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated in this instance. Accordingly, I refuse the application for an award of costs against the Council.

P N Jarratt

Inspector

[1] Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314

Site: **THREE OAKS, COMBE FLOREY ROAD, ASH PRIORS, TAUNTON, TA4 3NQ**

Proposal: Change of use of land for siting of mobile home for use as ancillary annexe accommodation at Three Oaks, Combe Florey Road, Ash Priors (retention of part works already undertaken)

Application number: 02/20/0002

Reason for refusal: Appeal – Allowed
Costs - Refused

Original Decision: Chair – Refusal

The Planning Inspectorate

Appeal Decision

Site Visit made on 1 February 2021 **by David Wyborn**

BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2021

Appeal Ref: APP/W3330/W/20/3261062 Three Oaks, Combe Florey Road, Ash Priors, Taunton TA4 3NQ

- 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 Brian Forsey against the decision of Somerset West and Taunton Council.
- The application Ref 02/20/0002, dated 27 March 2020, was refused by notice dated 17 June 2020.
- The development proposed is the retention of existing mobile home for use as ancillary annexe accommodation.

Decision

1. The appeal is allowed and planning permission is granted for the retention of existing mobile home for use as ancillary annexe accommodation at Three Oaks, Combe Florey Road, Ash Priors, Taunton TA4 3NQ in accordance with the terms of application Ref 02/20/0002, dated 27 March 2020 and subject to the following conditions:

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: 1349-PL-301A, 1349-PL-302 and 1349-PL304.

3) The mobile home hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling currently

known as Three Oaks, and shall not become a separate unit of accommodation.

Application for costs

2. An application for costs has been made by Mr Brian Forsey against Somerset West and Taunton Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The mobile home on site was allowed as a unit of separate accommodation for a temporary period while the rural worker's dwelling was being constructed. The new dwelling has been built and provides permanent on-site accommodation to serve the race horse training enterprise at the site. Condition 8 of the planning permission[1] for the dwelling required that within 2

[1] Approved on 2 October 2012 under Council reference 02/12/0011

weeks of the new dwelling being first occupied the temporary dwelling should be removed and the land restored to its former condition.

4. The dwelling is occupied, however, the mobile home which was used as the temporary accommodation remains on site. The application seeks to use the mobile home as ancillary annexe accommodation to the main dwelling.

5. The Council's second reason for refusal, and supplemented in their appeal statement, in essence, argues that as the mobile home should have been removed now the new dwelling has been completed it would contravene its original purpose to remain on site. However, the proposal the subject of the appeal is not based on an application to extend the time period or vary the condition on the original approval. The proposal is a separate planning application based on the case that the mobile home would be used as an annexe. In these circumstances, while I have had regard to the background planning history, it is the merits of the proposal as now argued that are the key considerations.

Main Issues

6. Accordingly, the main issues are:

- whether the proposal would be tantamount to the provision of a separate unit of accommodation in the countryside or an ancillary annexe to the main dwelling and, dependent on the outcome, whether the development plan would support the proposal in this countryside location, and
- the effect of the development on the character and appearance of the area.

Reasons

Separate unit of accommodation or an ancillary annexe to the main dwelling.

7. The submissions from the appellant explain that the annexe is required to provide additional guest accommodation, for use by apprentice stable hands gaining experience working in the stables, by visiting owners who come periodically to view their horses and to check on their progress, and by visiting members of the family[2]. It was explained that all occupiers would be staying on a temporary basis and would not have exclusive use of the mobile home, using it mainly for sleeping, with most daily activity in the main dwelling. The letter sets out that the majority of meals would

[2] Letter dated 27 March 2020.

be taken in the main dwelling, and there would be substantial shared use of facilities, such as for laundry, cooking, and socialising.

8. The applicant accepts that any planning permission would be conditional that the mobile home should be used for ancillary domestic use only, and not as a separate dwelling.

9. The third reason for refusal explains, in summary, that the mobile home would be a self-contained unit of accommodation with no functional link to the host dwelling. As a consequence, the Council judge that the proposal would not constitute an annexe but an additional unit of accommodation.

10. A leading case in respect of these matters is *Uttlesford DC v SSE & White [1992]* which determined that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling − instead it would be a matter of fact and degree.
11. In this case, the mobile home has been used as independent accommodation in the recent past, is fairly extensive in size, has all the facilities for separate occupation and lies outside the residential curtilage of the main dwelling.

12. On the ground, the mobile home is reasonably well grouped with the main stables building and occupants could share a communal parking area accessed off the only driveway to the site. However, the mobile home is some way across the yard area from the main house and therefore the location is not so convenient and clearly associated with the dwelling that the positions of the mobile home and dwelling would clearly facilitate an ancillary relationship. It is a matter of judgement as to whether the positioning and separation would, as a matter of practical reality and regardless of any occupancy condition, lead to the two elements of the accommodation functioning separately.

13. I give substantial weight to the explanation of the appellant and the submissions whereby it is made clear that there is a need for ancillary accommodation on the site for a range of occupiers. There is no substantive evidence and, on balance, no clear physical reason to conclude that the occupation of the mobile home could not operate in the way envisaged and applied for.

14. The combination of all these circumstances lead me to conclude that the outbuilding would be occupied as ancillary accommodation and not as a separate dwelling. A single planning unit of residential accommodation across the site would be retained. A planning condition in any approval restricting the use to ancillary accommodation would be reasonable and necessary to ensure that the use was appropriately controlled and that a separate unit of accommodation would not be formed in this countryside location.

15. I therefore conclude as a matter of fact and degree, and subject to an appropriately worded condition in any approval, that the proposal should be considered, as proposed in the application, as ancillary annexe accommodation to the main dwelling and not on the basis that it would constitute the formation of a separate unit of accommodation.

16. If the mobile home was not to be used as proposed and there was a breach of planning control in the future to create a separate unit of accommodation, then a separate grant of planning permission would be required, and there would be a risk of enforcement action if such permission was not granted.

17. However, in addition to the above, it is also necessary to consider whether the provision of a mobile home to provide the annexe accommodation would accord with the development plan. The Council draw attention to Policy D6 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016 (the DMP) which allows for the consideration of ancillary accommodation. The policy does not prevent such accommodation in the countryside and requires that where ancillary accommodation is permitted, planning control over subsequent use or sale as a separate dwelling will be imposed.

18. The Policy sets out an approach which includes the conversion of an appropriate building within the curtilage for such accommodation. In this case, there is not an appropriate building that is available to convert. The garage has not yet been built and the evidence indicates that if this was built and used as an annexe this approach would impact on the finances of the business. The policy also considers the approach when considering the erection of a new building within the curtilage of a dwelling although the policy does not address the circumstances when the proposal is in the form of a mobile home for ancillary accommodation. Nevertheless, as the policy is referenced in a reason for refusal it is reasonable to examine the policy criteria in the context of the present application for the use of the mobile home.

19. In relation to criterion A of Policy D6 of the DMP, it is difficult to judge the impact of an extension to the dwelling compared with the present proposal because there is no extension before me to consider. However, the dwelling is on a slightly elevated part of the site and an extension could potentially be more prominent than the mobile home in its present location depending on the size, position and design of any extension. As I have concluded below that the location of the mobile home does not cause harm to the surroundings it could very well be the case that the appeal proposal would be less damaging than an extension.

20. The retention and use of the mobile home would comply with criteria B, C and D of Policy D6 of the DMP for the reasons explained above. In relation to criterion E, the proposal would not harm the form and character of the main dwelling. As the mobile home is a standard size and a use of the land rather than a building, the individual design is not an issue and the size would be fixed by the legislation for caravans and therefore is not a matter of specific control.

21. It follows that the general policy approach for the provision of ancillary accommodation as set out by Policy D6 of the DMP would not be breached where the criteria was considered applicable to the appeal proposal. This weighs in favour of the scheme.

22. The Council also highlight that the dwelling was permitted to be of a size that allowed for a fourth bedroom to meet the then accommodation requirements of the business and that this bedroom is now used as a store room. However, the appellant has explained the reason the space is used as a store, and the need for the annexe accommodation both in terms of family and business needs. The personal circumstances carry little weight, however, the appellant has explained that the ability to provide accommodation particularly for apprentice stable hands and for visiting owners is very important to the ongoing success of the business. Consequently, the use of the mobile home as proposed would have an economic benefit to the business and this weighs in favour of the proposal.

23. In summary, a new unit of accommodation would not be formed. The scheme would provide an ancillary annexe and on the basis of the above analysis I conclude the proposal would be supported by or not conflict with the relevant policies of the

development plan. In particular, the proposal would accord with the approach in Policies SB1, CP1, CP8 and DM2 of the Taunton Deane Core Strategy 2011-2028 (September 2012) (the Core Strategy), D6 of the DMP and the National Planning Policy Framework which, amongst other things, sets the approach to development in the countryside.

Character and appearance

24. When approaching along the drive, the mobile home is sited in a slight dip in the land and is well screened by a beech hedge and other planting. It is seen within the site against the backdrop of the high hedge along the southern boundary and behind the fairly well established planting to its northern side. The screening and position of the mobile home means that it appears as a fairly minor feature when experienced in conjunction with the more prominent stable barn and new dwelling.

25. Within the wider landscape, the mobile home, or any replacement, is only visible in some limited locations from outside the site. In these locations the reasonably low height of its form, the position in the dip in the site and the established planting mean that it does not cause any material level of visual harm to the rural character of the area. This is especially in the context of it being set amongst the present group of buildings and in the wider surroundings which have a scattering of other structures.

26. The appellant has made the case, that if permission is refused, it would be possible to station a caravan within the curtilage of the dwelling and use it as ancillary annexe accommodation as an alternative to the present proposal. An appeal decision[3] from another site setting out the lawfulness of this general type of approach is included in the submissions. While all cases will have their individual circumstances, I consider, given the information on intended occupants and the way they would interact with the main house, that the siting of a caravan/mobile home within the curtilage of the dwelling, in a form that would not require planning permission, is an option that is likely to be available to the appellant.

27. There is space within the curtilage area to position a caravan and I consider that this alternative could be a real prospect to provide the accommodation that the appellant seeks. The dwelling and its curtilage are on slightly higher land and more exposed to views from the open countryside broadly to the north than the site of the mobile home. A caravan within the curtilage is therefore likely to be more prominent and cause some harm within the landscape compared with the mobile home site. Consequently, I consider that this fallback situation lends moderate additional weight in favour of the location of the appeal proposal.

28. In the light of the above analysis, I conclude that the present mobile home in its position does not harm the character and appearance of the area.
Accordingly, the proposal complies with Policies CP1, CP8, and DM1 of the Core Strategy which seek, in this respect, amongst other things, that the appearance and character of any affected landscape would not be unacceptably harmed by the development.

Other Matters

29. I have carefully considered all the representations both for and against the appeal proposal together with the comments of the Chairman of the Ash Priors Parish Meeting. The concerns that the mobile home has not been removed as required by

[3] APP/L5810/X/15/3140569

the condition are understandable. However, the mobile home is still in place and I am required to consider the proposal on its planning merits. I have already examined the issues regarding the size of the dwelling that was originally permitted to meet the appellant's needs and the arguments now raised both in support and against the additional space.

30. The adjoining landowner has explained that within the main buildings located to the south, livestock are overwintered and there is a machinery/workshop. It is explained that these buildings are directly adjacent to the mobile home and the relationship led to numerous complaints until the dwelling was moved across to the other part of the site. Concerns with the relationship of the mobile home and the adjoining farm buildings have been highlighted by the Council, although this was not progressed as a separate reason for refusal. The appellant has commented on this matter and judges that as they would have flexibility regarding when and how to utilise the annexe that any usual agricultural activities would not prove to be an issue for occupants of the annexe.

31. The mobile home would be an annexe and effectively be used as overflow accommodation and not a separate dwelling. In these circumstances, there would be some flexibility as to how it would be used and, on this basis, I consider that the relationship to the adjoining agricultural buildings would not be so harmful as to justify dismissal of the appeal on this issue.

Conditions

32. I have had regard to the conditions suggested by the Council and the advice in the Planning Practice Guidance. The statutory time limit is required and a condition specifying the approved plans is necessary in the interests of certainty.

33. A condition is necessary to restrict occupation of the mobile home to ancillary accommodation to the main dwelling and for it not to be used as a separate unit of accommodation so as to comply with development plan policies for the location of new residential units across the plan area.

34. The Council seek a condition requiring the removal of the mobile home within 5 years. However, a permanent permission is sought and such a temporary permission would not be reasonable as it would effectively negate the benefits of approval and be contrary to the advice in the Planning Practice Guidance.

35. Furthermore, the Council seek to remove permitted development rights, such as the ability to extend or alter what the draft condition says is a building, or erect outbuildings. However, in this case the proposal is the siting of a mobile home rather than a building and it would not benefit from permitted development rights for extensions and alterations. The area around the building is already fenced and well landscaped and the condition seeking the removal of permitted development rights is not necessary or reasonable.

36. The Council also seek a condition seeking details for approval of the parking areas to be associated with the mobile home. The mobile home would be used as an annexe in conjunction with the main dwelling and there is ample parking available adjoining the dwelling and yard. The condition is, therefore, not necessary in the interests of highway safety or visual impact.

Conclusion

37. For the reasons given above, the scheme would comply with the development plan when considered as a whole and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, and taking all other matters into account, I conclude that, subject to the specified conditions, the appeal should be allowed.

David Wyborn

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 1 February 2021 **by David Wyborn**

BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2021

Costs application in relation to Appeal Ref: APP/W3330/W/20/3261062 Three Oaks, Combe Florey Road, Ash Priors, Taunton TA4 3NQ

- 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 Brian Forsey for a full award of costs against Somerset West and Taunton Council.
- The appeal was against the refusal of planning permission for the retention of existing mobile home for use as ancillary annexe accommodation.

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises, regardless of the outcome, costs may be awarded against a party who has behaved unreasonably and caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The applicant has set out in the written submissions the case for a full award of costs, on the basis, in essence, that the Council acted unreasonably in respect of the substance of the matter under appeal, and it was unreasonable to refuse planning permission. In particular, it is argued that the Council disregarded the fact that the proposal is for annexe accommodation and instead referred to policies which are not applicable to the circumstances, determining the application on the basis that it would be self-contained accommodation with no functional link to the main dwelling. Furthermore, the Council referenced the mobile home variously, including as a new building and an unauthorised unit of accommodation and, as a consequence of all these matters, this led to the incorrect judgement that the location was one that did not support further residential units. It is argued that this was not an apt description or accurate understanding of the proposal.

4. Additionally, it is argued that the Council made vague, generalised and inaccurate assertions about the impact of the proposal on the character of the main dwelling and on the surroundings. The applicant also makes the case that there was failure to give adequate weight to material planning considerations, including most significantly, the existence of a valid fallback position which would have a greater impact.

5. The applicant believes that the Council has not adequately defended its reasons at appeal. It is explained that it raised arguments such as because the proposed dwelling met the accommodation needs in 2012 no further accommodation should be required, the proposal is contrary to the condition on the original permission to remove the mobile home and the mobile home is effectively a self-contained dwelling, and none of these arguments justify the reasons for refusal.

6. The Council has responded in writing and, in summary, consider that the failure to remove the mobile home in accordance with the planning conditions resulted in the present planning application being submitted and the proposal was correctly determined against relevant policies of the development plan.

7. It is explained that the Council judge that, in accordance with the third reason for refusal, it is not considered that the retention of the mobile home would be less damaging than an extension or conversion. It refers to the garage that has not yet been built which could provide the required accommodation. The Council does not accept that there is a functional link between the mobile home and the new dwelling due to the distance of separation and the mobile home being fully-self-contained and therefore the approach of the Council has been sound and justified.

8. The Council argue that the planning appeal that the applicant submitted was considered but the circumstances were substantially different and had no bearing on what was before the Council for consideration. The Council accept the case made regarding the fallback position, but with qualifications, and that it judged that the removal of the mobile home from its unauthorised position and replacement to the rear of the dwelling would accord with the previous permissions and result in a closer and functional link with the main house.

9. Examining these matters, I consider that the Council placed too much emphasis on the history of the mobile home and the requirement for its removal rather than on the case made that it was now sought to be retained as ancillary annexe accommodation. Nevertheless, even having regard to the stated ancillary way the accommodation would function in relation to the dwelling, it was a matter of planning judgement as to whether the separation of the mobile home from the main dwelling was such that it could not practically function in an ancillary capacity. It will be seen from my decision that I consider that the balance falls in favour of the proposal in this regard, however, as this was a matter of judgement, it was not unreasonable for the Council to conclude otherwise on this planning matter. In these circumstances, there was merit in the analysis which follows from the conclusion that the mobile home would form a self-contained unit and therefore would not comply with the development plan which sought to control new units of accommodation in the countryside.

10. The Council did have some regard to the fallback position and also considered that there were policy compliant options, such as an extension, which would cause less harm to the character and appearance of the area than the appeal proposal. It will be seen that while I disagree with this analysis it was a matter of planning judgement as to the effect of the proposal on the surroundings and for the Council to come to a

conclusion that there would be harm in this respect does not demonstrate unreasonable behaviour.

11. It follows that in relation to the substantive issues, the Council made sufficient planning arguments to defend key aspects of the reasons for refusal and the appeal could not have been avoided.

12. As a result, it follows that in terms of the issues raised by the applicant in the costs claim, I cannot agree that the Council has acted unreasonably in this case. Accordingly, the applicant was not put to unnecessary or wasted expense.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the Planning Practice Guidance, has not been demonstrated and an award of costs, either in full or in part, is not justified.

David Wyborn

INSPECTOR

Site: **THE CROFT, YALLANDS HILL, MONKTON HEATHFIELD, TAUNTON, TA2 8NA**

Proposal: Erection of fencing to the front of The Croft, Yallands Hill, Monkton Heathfield (retention of works already undertaken)

Application number: 48/20/0026

Reason for refusal: Appeal – Dismissed

Original Decision: Delegated Decision – Refusal

The Planning Inspectorate

Appeal Decision

Site Visit made on 23 February 2021 **by T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal Ref: APP/W3330/D/20/3262948 The Croft, Yallands Hill, Monkton Heathfield, Taunton, TA2 8NA

- 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 Sarah Webber against the decision of Somerset West and Taunton Council.
- The application Ref 48/20/0026, dated 9 June 2020, was refused by notice dated 21 September 2020.
- The development proposed is described as Erect a fence.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The fence the subject of the appeal has been erected and I observed it in situ on my site visit. I have dealt with the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

4. Fronting on to the highway, the appeal site is visible in public views for some distance in either direction along Yallands Hill and the fencing that has been erected is a prominent feature in the locality. The surrounding area contains numerous properties with boundary treatment facing the highway including, amongst other aspects, walls

and fences, some with soft landscaping above, and hedges and vegetated banks. Although this provides the locality with a varied appearance, the generally low walls and fences present, the open driveways and the presence of soft landscaping on many plots means that it has a relatively open and verdant character.

5. The proposed fence is set-back from the highway behind a narrow stretch of grass. However, due to its relatively significant height and its stark and solid appearance, it is an imposing feature that dominates and encloses its surroundings. It therefore reads as an incongruous, harmful addition. In coming to this view, I have taken into account that there are fences in the vicinity of the site that are over 1 metre high, that a 1.8 metre high fence on a nearby property to the east was previously granted planning permission despite numerous complaints from neighbours and that the new housing estates include 1.8 metre high fencing.

6. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. I therefore find that it conflicts with Policies DM1 of the Adopted Taunton Deane Core Strategy 2011 - 2028. Amongst other aspects, this requires development to not unacceptably harm the character and appearance of the street scene.

Other matters

7. The appellant indicates that the fencing installed is taller than was intended due to stock levels during the Covid lockdown and that bushes and climbing plants would have been planted which could intertwine the fence to make it less visible. Be that as it may, and despite the appellant indicating that they have started to plant some shrubs, the appeal proposal involves the erection of the fence that is now in situ. I have therefore determined the appeal on this basis, based on the submitted evidence and plans. Although the planting of trees on the inside of the fence would benefit wildlife, I have also little substantive evidence that this activity is dependent on the appeal proposal being allowed.

8. It has been put to me that, prior to the erection of the fence, the over eight feet high beech hedge was becoming dangerous to cut back given its proximity to the highway and was limiting visibility down the hill. Positioned closer to the house, the fence is said to be safer for all and to have improved visibility. Be that as it may, these matters do not provide justification for development that conflicts with the development plan.

9. I recognise that the fence makes the appellant's wife, who has a fear of burglars, feel more secure. An intended new dog, which would also make her feel safer, would be less likely to get under the fence than a hedge, and the appellant also worries that young nieces and nephews visiting could run into the road. In addition, the fence is said to have improved the noise from the road. However, I observed on my site visit that the site's access/driveway from the highway is open and the fence does not prevent access to the front of the property and its front door. It therefore seems to me that the benefits of the appeal proposal in terms of security, safety and noise are likely to be relatively limited and therefore neither outweigh the harm identified nor justify a departure from the development plan.

Conclusion

10. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR

Site: **BARN A, B, C AND D, PYLEIGH HOUSE FARM, PYLEIGH MANOR FARM LANE, LYDEARD ST LAWRENCE, TAUNTON, TA4 3QZ**

Proposal: Prior approval for proposed change of use from agricultural building to dwelling house (Class C3) and associated building operations at Barn D, Pyleigh House Farm, Pyleigh, Lydeard St Lawrence

Application number: 22/20/0002, 22/20/0003, 22/20/0004, 22/20/0004

Reason for refusal: Appeals – Dismissed

Original Decision: Delegated Decision – Refusal

The Planning Inspectorate

Appeal Decision

Site Visit made on 8 February 2021 **by David Wyborn**

BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Appeal A Ref: APP/W3330/W/20/3262500 Barn A, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- 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 & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0002/CQ, dated 17 March 2020, was refused by notice dated 7 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal B Ref: APP/W3330/W/20/3262537 Barn B, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- 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 & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0003/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal C Ref: APP/W3330/W/20/3262547 Barn C, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- 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 & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0004/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
- The development proposed is conversion of barn to dwelling.

Appeal D Ref: APP/W3330/W/20/3262552 Barn D, Pyleigh House Farm, Pyleigh, Lydeard St. Lawrence, TAUNTON, TA4 3QZ

- 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 & Mrs Richard Churchill against the decision of Somerset West and Taunton Council.
- The application Ref 22/20/0005/CQ, dated 17 March 2020, was refused by notice dated 6 May 2020.
- The development proposed is conversion of barn to dwelling.

Decisions

1. Appeal A is dismissed.

2. Appeal B is dismissed.

3. Appeal C is dismissed.

4. Appeal D is dismissed.

Procedural Matters

5. Separate applications have been submitted concerning four different buildings under Class Q of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) seeking approval for the change of use under Q(a) and the building operations reasonably necessary to convert the building under Q(b). Each proposal concerns a separate barn with its individual considerations, although some of the relevant issues are similar.

6. A Structural Appraisal Report has now been submitted to seek to address the reasons for refusal in each case. I have had regard to the Report in my considerations.

7. I noted that at the application stage, the County Council Ecologist had raised a holding objection to the works to Barns A, B and C because of the potential for roosting bats in the structures. As I considered that the presence of bats could be a material issue that may affect the outcome of three of the appeals I sought the views of the appellant on the advice of the Ecologist. The appellant has responded with detailed comments and I have taken them into account as part of my considerations. I

am satisfied, therefore, that no party would be prejudiced by my consideration of this issue.

8. At the appeal stage, information from the County Council Ecologist has raised the issue of recent advice from Natural England regarding nutrient flows from new development within the catchment of the Somerset Levels and Moors Ramsar site. It is explained that because of the impacts there is a need for an appropriate assessment, and depending on the outcome, this could disapply the ability for the proposals, in each case, to be considered under Class Q. The appellant has had the opportunity to comment on this matter at the final comments stage and I will examine the implications of this advice later.

Main Issues

9. The main issues are, in the case of each building, whether or not the proposal is applicable to be considered under Class Q, and if so, secondly, whether it would meet with the conditions and limitations of Class Q.1, and finally, if these circumstances are met, whether prior approval should be granted.

Reasons

Barn A

10. Barn A is a substantially built and traditional building with a tiled roof. It appears to be in reasonable condition and structurally sound. The Structural Appraisal Report, although brief, provides sufficient evidence to affirm this view. I consider that the works proposed to the structure would retain the vast majority of the building and can be considered as a conversion. Therefore, the proposal would be applicable for consideration in terms of Class Q.

11. Paragraph Q.1.(h) sets out one of the limitations for a scheme to be considered as permitted development. This specifies that a proposal would not be permitted development if the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point.

12. The plans show that two external staircases would be constructed to facilitate access to the external doors. The staircases incorporate a number of steps and would be of solid construction such that they would not be considered to be *de minimis* additions. Their construction would involve development. The limitation under paragraph Q.1.(h) does not reference floorspace but it is the external dimensions of the building that should not be extended. The definition of a building in the GPDO includes part of a building. The staircases would be attached to and form part of the finished building. The staircases would, therefore, extend the external dimensions of the building at those given points and the limitation under paragraph Q.1.(h) would not be met.

13. As a consequence, I conclude that the scheme would not comply with all the conditions and limitations set out in Class Q.1 and therefore the proposal would not be permitted development. As a result, I do not need to consider the prior approval matters in this case, including any issue in relation to bats that may be present.

Barn B

14. Barn B is another substantially built and traditional building. It has some cracks to the elevations but it still appears to be in reasonable condition and of generally sound construction. The Structural Appraisal Report affirms this analysis. The works

proposed to the existing structure would fall within the bounds of a conversion and therefore the scheme would be applicable for consideration in terms of Class Q.

15. The proposal for this barn includes the erection of a fairly sizeable external ramp and steps to provide access to the external door. This addition would be attached to the external form of the present building and form part of the building. This addition would extend the external dimensions of the building at this given point. This would be contrary to the requirements of paragraph Q.1(h).

16. Accordingly, I conclude that the scheme would not comply with all the conditions and limitations set out in Class Q.1 and therefore the proposal would not be permitted development. As a result, I do not need to consider the prior approval matters in this case, including any issue in relation to bats that may be present.

Barn C

17. Barn C is a reasonably modest sized stone barn at one end of the yard area. It is a substantially built and traditional building with a number of existing openings. While there are some cracks to the elevations it appears to be a solidly constructed building. The Structural Appraisal Report is sufficient to support this analysis. The works would retain the vast majority of the structure and are considered to be a conversion of the building. In this respect the

    proposal can be considered under Class Q. The Council has not raised any issue with the conditions and limitations listed under paragraph Q.1 and I have found no reason to disagree. Accordingly, it is necessary to consider the prior approval matters in relation to the scheme.

18. I have noted from the advice from the County Council Ecologist, at the application stage, that there are some opportunities for crevice roosting bats in the structure of Barn C. As the Council did not consider the proposal met with the requirements of Class Q it did not consider this matter further and it did not form a reason for refusal. Given my findings on the preceding matters, this is now a issue which I need to address.

19. I note that no Preliminary Bat Roosting Survey has been submitted as recommended by the County Ecologist in his original advice. Bats are a protected species. The advice in Circular 06/2005 is that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. I consider that this advice is also relevant to the present proposal and the necessary considerations.

20. I note that the submissions indicate that the appellant's own observations have not witnessed bats leaving, entering or inside the buildings, or seen physical evidence of any bats being there. However, in the absence of professional survey information undertaken in accordance with best practice, I attribute these observations limited weight. It seems to me from my site visit that the location of the barn and its features could provide suitable roosts for bats and this is also the view of the County Ecologist whose professional opinion I attribute substantial weight. It would not be appropriate to seek resolution of this issue the subject of a condition in any approval. This is because the nature and extent of any bats are not known and, consequently, there is uncertainty as to what mitigation may be required and whether the design may need to be altered to address this issue.

21. Relying on the fact that causing harm to a bat habitat could be a criminal offence to ensure the protection of any bats that may be present would not be appropriate as it is necessary to take all relevant considerations into account at this stage.

22. As the location of the barn, together with its features, make it potentially suitable for bats to be present I conclude that it would be undesirable for the building in this location to change to a dwellinghouse because of the potential presence of a protected species. The proposal would therefore fail to satisfy the requirements of paragraph Q.2.(1)(e), the wording of which I consider is sufficiently broad to cover this issue. Consequently, I conclude that prior approval should not be granted and the proposal would not be permitted development under Class Q.

Barn D

23. Barn D is an opened fronted portal framed barn. It has an internal metal frame with timber purlins. The enclosed sides have a mix of block work, horizontal timbers, fibre cement sheeting and vertical slatted timber elements. I have carefully considered the Structural Appraisal Report and all the accompanying details. The Report says the roof should be replaced, and is not definitive, in

    my judgement, as to precisely what other parts of the structure would or would not be retained as part of the proposal under consideration.

24. In particular, I note that the Report explains that new perimeter walls are to be constructed with the existing 140mm blocks left in place. However, it is also suggested that new lightweight perimeter walls are supported off the new slab with an edge thickening. There is limited detail to the specifications or large scale drawings, for instance, to help me understand whether this approach is consistent and could be undertaken given the condition and mix of external walling that I observed at my site visit. Furthermore, the provision of an edge thickening may be akin to a foundation which is an addition not permitted under paragraph Q.1.(i). I do not have the level of detail to assist me to determine whether this would be the case.

25. Again there is some doubt, in my mind, based on my observations at the site visit, as to whether the timber purlins would be sufficient and while they could be strengthened the details are not available to understand how much of this part of the structure, if any, may need to be removed and what could be retained and strengthened. I have had regard to the final comments of the appellant on this matter and appreciate that the Structural Appraisal Report comes from a qualified professional. However, the detail is brief and not entirely definitive such that I am not able to ascribe any more than limited weight to the Report submissions in respect of Barn D. Because of the form of the structure and its present condition, more detail is necessary to accurately assess the likely extent of works to be undertaken.

26. The ability to undertake works to facilitate a conversion can be quite broad under Class Q, including a replacement roof. However, from my assessment on site and the details submitted with the application, I am concerned that much of the fabric could need to be removed to facilitate the provision of the dwelling. It may be the case that so much of the existing fabric would be lost that effectively only a skeletal frame of the original building would remain. If this was the case, then having regard to the approach set out in *Hibbitt and another v Secretary of State for Communities and Local Government (1) and Rushcliffe Borough Council (2) [2016] EWHC 2853 (Admin)* the works would not fall within Class Q as they would constitute a rebuild and not a conversion.

27. The advice in the Planning Practice Guidance[4] explains that it is not the intention of the permitted development right under Class Q to allow rebuilding work which would go beyond what is reasonably necessary for the conversion of the building to residential use. It is explained, therefore, it is only where the existing building is already suitable for conversion to residential use that the building would be considered to have the permitted development right.

28. In my judgement, I do not have the necessary and detailed information to accurately assess whether the works would constitute a conversion or a rebuild. Paragraph W.(3)(b) explains that the Local Planning Authority may refuse an application (for prior notification under Part 3) where in the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

29. As a consequence, I conclude that insufficient information has been provided to establish whether the proposed development would comply with the requirement that the works would constitute a conversion and therefore would comply with the requirements of Class Q. Consequently, in accordance with paragraph W.(3)(b) the scheme cannot proceed as permitted development and as a result, I do not need to consider the proposal further.

Other Matters

30. In respect of the potential effect on the Somerset Levels and Moors Ramsar site it appears from the evidence that nutrient flows from new housing and other developments from within the catchment of this habitat site are entering the watercourses and adversely changing the environmental conditions for rare aquatic invertebrates. Based on the information it seems probable that there would be a pathway from the additional dwellings to the habitat site and, therefore, there would be a likely significant effect from each appeal proposal, either alone or in combination with other projects, to the designated site.

31. The grant of planning permission under Article 3(1) of the GPDO is subject to the provisions of the GPDO for each class of development and compliance with regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). Effectively, Article 3(1) provides a precommencement condition which must be met, where the development would affect a European protected habitat, before the works can be undertaken as permitted development. This includes a separate application to the Local Planning Authority under regulation 77 of the Habitats Regulations to allow the Local Planning Authority to undertake an appropriate assessment and, depending on the outcome, this would determine whether, in terms of that matter, the scheme could be undertaken as permitted development under the GPDO.

32. I am not aware that an application to the Local Planning Authority under regulation 77 has been made in respect of any of the proposals and therefore whether this pre-commencement requirement of Article 3(1) could be met. Nevertheless, as the regulation 77 application can be submitted and potentially approved after the grant of prior approval, it is not determinative in respect of the main issues that I have examined and, therefore, I do not need to consider this matter further as part of these appeals.

[4] Paragraph: 105 Reference ID: 13-105-20180615

33. Two letters of objection from local residents have been submitted and I note that Lydeard St Lawrence and Tolland Parish Council raise no objections to the four proposals. I have taken these views into account, however, they do not materially influence my considerations on the main issues examined above.

Conclusion

34. For the reasons set out above, and having regard to all other matters raised, I conclude that for the specified reasons in each case, all four appeals should be dismissed.

David Wyborn INSPECTOR