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# APPEAL DECISIONS – 02 February 2023

Site: Elms Farm, Forest Drove, Bickenhall, Taunton, TA3 6UE

Application number: 04/22/0001

Reason for refusal:

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

Appeal Decisions

Hearing held on 6 December 2022

Site visit made on 6 December 2022

Decision by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal A Ref: APP/W3330/X/21/3278008

Elms Farm, Forest Drove, Bickenhall, TAUNTON, TA3 6UE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, against a refusal to grant a certificate of lawful use or development (LDC).

- The appeal is made by Miss J Criddle, Mrs I Betzler & Miss F Criddle against the decision of Somerset West and Taunton Council.

- The application ref 04/20/0013/LP, dated 30 June 2020, was refused by notice dated 23 February 2021.

- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.

- The development for which a certificate of lawful use or development is sought is proposed change of use of an agricultural building into one dwelling.

Appeal B Ref: APP/W3330/W/22/3302573 Elms Farm, Bickenhall, TAUNTON, TA3 6UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.

- The appeal is made by Miss, Mrs & Miss J, I & F Criddle, Betzler and Criddle against Somerset West and Taunton Council.

- The application Ref 04/22/0001/INV is dated 27 June 2022.

- The application sought planning permission for the proposed change of use from agricultural building to dwelling house (Class C3) and associated building operations without complying with a condition attached to permitted development.

- The condition in dispute is no Q.2(3) which states that Development under Class Q is permitted subject to the condition that development under Class Q(a), and under Class Q(b), if any, must be completed within a period of 3 years starting with the prior approval date.

- No specific reason is given for the condition.

Preliminary Matters

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Relevant legislation includes Schedule 2, Part 3 Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) [GPDO]

#### Decisions

##### Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful. Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573 <https://www.gov.uk/planning-inspectorate> 2

##### Appeal B

2. The appeal is allowed and planning permission is granted for variation of a condition of application 04/20/0002CQ for the extension of three years to complete the development at Elm Farm, Forest Drove South, Bickenhall at Elms Farm, TAUNTON, TA3 6UE in accordance with the terms of the application, Ref 04/22/0001/INV, dated 27 June 2022, and the plans submitted with it, subject to the following conditions.

- Development under Class Q(a) and under Class Q(b), if any, must be completed within a period of 3 years starting with the date of this decision.
- Development shall be completed in accordance with the requirements of GPDO Class Q, that remain relevant, and in accordance with the plans/details of applications 04/20/0001/INV and 04/20/0002/CQ.

##### Application for costs

3. An application for costs was made by the appellants against the Council and this is the subject of a separate decision.

#### Main Issues

##### Appeal A

4. The main issues in this case are:

- Whether the effective determination on prior approval as required by GPDO Condition Q2, also confirms that the development conforms with the requirements of GPDO Q1.
- Whether the applicants have shown on the balance of probability that the development was solely for an agricultural use as part of an established agricultural unit on the 20 March 2013 or in the case of a building which was in use before that date but was not in use on that date, when it was last in use.

##### Appeal B

5. The parties acknowledge that the outcome of Appeal A will effectively determine the outcome of Appeal B. If Appeal A fails the appellant agrees there would be no permitted development to attach conditions. Conversely the Council accept that if Appeal A succeeds then there is a condition. It also acknowledged that in that case extension of the condition for a further 3 years would be reasonable.

#### Reasons

##### Appeal A

##### Prior Approval

6. The prior approval requirement comes from GPDO Part Q2(1). It notes that where development is proposed under GPDO Class Q(a) together with development under Class Q(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required.

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Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573  
<https://www.gov.uk/planning-inspectorate> 3

7. The determination as to whether prior approval is required relates to matters (a) to (g), it does not relate to whether the proposed act of development accords with GPDO Class Q in the first place.

8. Therefore, if a Council does not respond within the 56 day period (or even if it does respond and say prior approval is not required) that only means that the appellant does not need to seek prior approval for the matters (a) to (g). Therefore, the fact the Council did not respond within 56 days did not confirm accordance with GPDO Class Q in general.

Use of the building

9. For LDCs the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence is precise and unambiguous to justify the grant of a certificate on the balance of probability.

10. The original consent for the building was for the erection of a calf shed and fodder store (Application no 15/92/008). There is no evidence for the use at that time, but presumably in granting consent some justification of the agricultural need was demonstrated. Apart from this group of buildings there are no other buildings to service the land.

11. There is little evidence to suggest that there has been any intervening use of the building. The Council has some correspondence/information that the building has been used for equestrian purposes. It is acknowledged by all that the owner at the time kept horses, which were for her own recreation and not an agricultural use. However, the owner lived a little away from the appeal site and at her home had stables and a fenced area where horses could be kept. Grazing of horses on the land around the appeal site would remain an agricultural use.

12. In addition, the inside of the appeal building is not set up for the stabling of horses, with low block walls around the pens, which are relatively large. There are also narrow hatches to allow small animals to be led from the pens. I do not consider the Council's evidence is nearly sufficient to suggest an equestrian use of the building, particularly given the building's arrangement and fact that the owner had her own stables near her house. The use of land for grazing only was acknowledged by the Council in 1985.

13. There is a grazing Licence for 2013 related to a paddock at Mistletoe Cottage, showing further land was sought, and that land was restricted to grazing sheep.

14. Agricultural use implies trade or business, but there is no size, profitability or viability of the business test. The land held by the previous owner in 2013 was well over 30 acres and there are land registry documents to support this. The fact that the land was not all together, does mean that it was not used as a single unit.

15. Importantly, on the death of the previous owner in 2019 Agricultural Property Relief from Inheritance Tax was successfully claimed. This would only be likely to have been granted if Her Majesty's Revenue and Customs [HMRC] were satisfied that Elms Farm was in genuine agricultural use. The Council say that

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Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573  
<https://www.gov.uk/planning-inspectorate> 4

the evidence submitted to HMRC should also have been presented to it. Clearly that would have been beneficial, but the applicants note that the submission to HMRC was on behalf of the previous owner and they do not have access to the relevant information. In my view, the fact that HMRC gave relief for inheritance tax, on the basis of the agricultural use, carries significant weight. The Council also say that it would have been beneficial to see business records of the previous owner, demonstrating the extent of the business. While beneficial, these were not available to the appellants and they are not essential to show on the balance of probability the use, if there is sufficient other evidence.

16. Records show a significant number of sheep were sold between 2012 and 2019, indicating a trade in livestock to sales and an abattoir. The fact that many of these animals were sold to abattoirs suggests a commercial rearing of livestock, not a hobby farm. Hobby farmers tend to keep animals as pets or for breeding or maybe for their own domestic consumption.

17. The land available was much greater than necessary to be able to take advantage of agricultural permitted development rights under Class A of Part 6 of Schedule 2 of the GPDO. The right relates to agricultural land which is used as part of a “trade or business”. The area of land is not itself determinative of the question of “trade or business”, but it is clear that a smaller unit than the land related to the appeal can operate on a commercial basis.

18. The previous owner produced a substantial hay crop (it is noted as roughly three times what would have been needed for her own livestock) and the cutting and baling was carried out by a professional contractor. This evidence suggests something more than a hobby. I acknowledge that the evidence does not suggest a highly profitable enterprise, but more subsistence type farming.

19. I consider that if the above information is looked at in the round it shows, on the balance of probability, that the building was part of an agricultural holding, was designed for agricultural use, and that the internal layout reflects this (and not use as a stable) and that was its sole use. Records suggest an active agricultural use before March 2013 and a continuing agricultural use after that date. There is no reasonable suggestion of any other, or intervening uses. I conclude that the building was in agricultural use, associated with a business on the land surrounding and nearby.

#### Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed change of use of an agricultural building into one dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

#### Appeal B

21. I have allowed Appeal A, so acknowledge that permitted development requirements were complied with. However, I have some concern about GPDO condition Q2(3). This condition only comes into effect or starts where there is prior approval. An application was made for a determination as to whether prior approval was required, and there was no response from the Council

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within the 56 day period, that effectively determined the matter of whether prior

Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573  
<https://www.gov.uk/planning-inspectorate> 5

approval was required. It does not grant prior approval by default, it just means that prior approval is not required. As at this stage there is no prior approval requirement, it is not possible for GPDO condition Q2(3) to come into effect.

22. Although GPDO condition Q2(3) cannot take effect, it is still attached to the permission, so I will consider it. Shortly after the expiry of the 56 day period the Council stated its view that the development was not in compliance with GPDO Class Q, as in its opinion it did not conform with Q1. Therefore, the appellants delayed commencing construction.

23. This seems to me an entirely reasonable response to the situation. Until it was shown to be permitted development or not it would have been very unwise to proceed. Given that I am considering this application on the basis of being permitted development, it is only right that the requirements/conditions relevant to permitted development should be reimposed. Therefore, it is reasonable that the period for completion as set out in GPDO Q2 (3) should be reimposed, but with the date of this decision being the start date of the completion period.

Conditions

24. GPDO conditions Q2(a) and (b) have been discharged by the appellant so these do not need to be reattached to this decision. However, it is reasonable that the permission should relate back to the permitted development as set out in GPDO Class Q and part Q1, as relevant to the development and in accordance with the application for prior approval.

Conclusion

25. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission with the disputed condition, but confirming the activation date is that of this decision. I shall also add a condition confirming that planning permission shall be in accordance with Permitted Development Class Q as relevant to the permission.

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

Inspector's Decision

Graham Dudley

Graham Dudley

INSPECTOR

Appendix 1 List of those who have appealed

Reference

Case Reference

Appellant

Appeal A

APP/W3330/X/21/3278008

Miss J Criddle, Mrs I Betzler & Miss F Criddle

Appeal B

APP/W3330/W/22/3302573

Miss, Mrs & Miss J, I & F Criddle, Betzler and Criddle

Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573

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<https://www.gov.uk/planning-inspectorate> 6  
Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573  
<https://www.gov.uk/planning-inspectorate> 7

Lawful Development Certificate

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192**

(as amended by Section 10 of the Planning and Compensation Act 1991)

**TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND)**

**ORDER 2015: ARTICLE 39**

**IT IS HEREBY CERTIFIED** that on 30 June 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and specifically the part of the building cross hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

**On the balance of probability the identified part of the building was solely for an agricultural use as part of an established agricultural unit on the 20 March 2013.**

**Signed**

**Graham Dudley**

**Inspector**

**Date: 12 January 2023**

**Reference: APP/W3330/X/21/3278008**

**First Schedule**

**Proposed change of use of an agricultural building into one dwelling.**

**Second Schedule**

**Land at Elms Farm, Forest Drove, Bickenhall, TAUNTON, TA3 6UE**

**IMPORTANT NOTES – SEE OVER**

**Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573**

**<https://www.gov.uk/planning-inspectorate> 8**

**NOTES**

**This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).**

**It certifies that the use described in the First Schedule if taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.**

**This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.**

**The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.**

**Appeal Decisions APP/W3330/X/21/3278008 and APP/W3330/W/22/3302573**

**<https://www.gov.uk/planning-inspectorate> 9**

**Plan**

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This is the plan referred to in the Lawful Development Certificate dated: 12 January 2023  
by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA  
Land at: Elms Farm, Forest Drove, Bickenhall, TAUNTON, TA3 6UE  
Reference: APP/W3330/X/21/3278008  
Scale: Not to Scale

## **APPEAL DECISIONS – 02 February 2023**

Site: The Wilderness (land North of The Warren) Stoke Road, North Curry, TA3 6HN

Application number: 24/18/0036

Reason for refusal:

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

Appeal Decision

Site visit made on 21 November 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeal Ref: APP/W3330/W/21/3287661

The Wilderness (land north of The Warren), Stoke Road, North Curry, Somerset TA3 6HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of an approval.
- The appeal is made by Mr Mark Taylor against the decision of Somerset West and Taunton Council.
- The application Ref 24/18/0036, dated 20 February 2021, sought discharge of conditions 4 and 8 of planning permission Ref 24/18/0036 granted on 10 December 2018.
- The details of the conditions for which approval are sought are:  
(4) Before the commencement of the development hereby permitted the applicant, or their agents or successors in title, shall have secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted and approved in writing by the Planning Authority. The WSI shall include details of the archaeological excavation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results. The development permitted shall be carried out in accordance with the approved scheme.  
(8) Before development commences (including site clearance and any other preparatory works) a scheme for the protection of trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. Such a

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scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing, all in accordance with BS 5837:2012. Such fencing shall be erected prior to commencement of any other site operations and at least two working days' notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority. No activities whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority.

#### **Decision**

1. The appeal is dismissed.

#### **Preliminary Matters**

2. Notwithstanding the substantive content of conditions 4 and 8 attached to planning permission Ref 24/18/0036 (Planning Permission), discharge of these conditions was withheld by the Council due to the requirement for an appropriate assessment to be carried out, under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) (The Habitat Regulations). The requirement for an appropriate assessment arose following advice from Natural England dated 17 August 2020, which said new Appeal Decision APP/W3330/W/21/3287661

<https://www.gov.uk/planning-inspectorate> 2

housing development could, alone or in combination with other projects, lead to likely significant effects on the integrity of the Somerset Levels and Moors Ramsar (Ramsar Site). This is due to the unfavourable condition of the Ramsar Site arising from the high level of phosphates, which in turn, means that any additional phosphate load risks additional harm.

3. The Written Ministerial Statement dated 20 July 2022 (WMS) confirms that the requirement for an HRA can arise in connection with an application for the discharge of conditions. Specifically, it states "The Habitats Regulations Assessment provisions apply to any consent, permission, or other authorisation, this may include post-permission approvals; reserved matters or discharges of conditions".

4. I acknowledge that conditions 4 and 8 are not directly related to the issue of phosphates. Nonetheless, following the advice of Natural England and the potential risk of the proposal to the integrity of the Ramsar Site, I consider it entirely appropriate for the Council to require an appropriate assessment to be carried out before development can properly commence. The WMS confirms the lawfulness of this approach, which has been further endorsed in a recent appeal decision<sup>1</sup>. I have proceeded on this basis.

#### **Main Issue**

5. In this context, the main issue is the effect of the proposed development on the integrity of the Somerset Levels and Moors Ramsar Site.

#### **Reasons**

6. The Ramsar Site is afforded special protection under the Ramsar Convention, due to its internationally important wetland features, including the floristic and invertebrate diversity and species of its ditches, which together help support numerous habitats and protected species. As highlighted above, Natural England has advised that the Ramsar Site is now in an unfavourable condition, due to the effects of eutrophication caused by such excessive phosphate levels. Any additional phosphate load into the Ramsar Site could



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therefore exacerbate the site's unfavourable condition, thereby further undermining its integrity.

7. The appeal site is located within the catchment of the Ramsar Site. In this area, wastewater from new residential development risks increasing phosphate levels within the protected area. The proposal could therefore exacerbate the unfavourable effects of eutrophication caused by excessive phosphate levels. In turn, likely significant effects on the Ramsar Site cannot be ruled out without appropriate mitigation.

8. To rule out such effects, proposed mitigation would need to procure nutrient neutrality in connection with the development. Mitigation measures would therefore need to fully offset the potential additional phosphate load arising from the development into the Ramsar Site. In this instance, the appellant's Nutrient Neutrality Statement (NNS)<sup>2</sup> concludes that the proposal would lead to a total phosphate surplus of 0.304kg/year.

9. A Package Treatment Plant (PTP) has been proposed by the appellant as mitigation for the phosphate surplus arising from the development. However, 1 APP/W3330/W/22/3296248

2 Nutrient Neutrality Assessment & Mitigation Strategy, 29 September 2022  
Appeal Decision APP/W3330/W/21/3287661

<https://www.gov.uk/planning-inspectorate> 3

advice from both Natural England and the Environment Agency (EA) is clear that new development should connect to a public foul sewer (rather than a PTP), where it is reasonable to do so. This is because private non-mains foul drainage systems are not considered to be environmentally acceptable within publicly sewered areas. Generally, where a site is within 30 metres of a public foul sewer, the presumption in favour of connection to a public foul sewer will therefore apply.

10. In this instance, correspondence between the Council and the EA suggests that the site is indeed within 30 metres of a public foul sewer. On this basis, the EA says that a PTP would not be appropriate. Without any information to indicate otherwise, this means it is unlikely that the EA would issue a permit to the appellant for use of the proposed PTP. In turn, I cannot be certain that the proposed mitigation would be realistic, or indeed feasible, and without such mitigation, the total phosphate surplus arising from the development would not be adequately offset.

11. On this basis, I am left with no option but to conclude as competent authority that the proposal would have significant adverse effects on the integrity of the Ramsar Site. The development would therefore fail to pass the appropriate assessment required under Regulation 63 of the Habitats Regulations.

Other Matters

12. The appeal application relates to land north of The Warren (known as The Wilderness), and not The Warren itself. Whilst the two sites are closely linked, the planning history of the wider site would not alter outcome of the appropriate assessment. Indeed, the NNS concluded that development of The Wilderness (specifically) would lead to a total phosphate surplus of 0.304kg/year. Irrespective of the number of dwellings that have previously occupied the wider site (including The Warren), the development would therefore exacerbate the unfavourable condition of the Ramsar Site, without appropriate mitigation. In turn (and in its own right), the development would

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fail the appropriate assessment required under Regulation 63 of the Habitats Regulations.

13. Whilst I sympathise with the appellant's position, any application to extend the time limit for implementation of the Planning Permission would need to have been made within six months of the date of the original Permission. This is because such applications are specifically excluded from the remit of s73 TCPA 1990. Instead, such applications would be dealt with in accordance with the provisions of s93(3) and s78 of the TCPA, which impose the standard six month time limit for such an appeal.

14. The proposed sale of the appeal site (with the benefit of Planning Permission) is intended to help fund necessary repairs to, and restoration of, the Brewery (which a listed building). Whilst this would be a benefit of the scheme, it would not be sufficient to outweigh the significant adverse effects on the integrity of the Ramsar Site.

**Conclusion**

15. I have not been able to rule out the possibility of likely significant effects on the integrity of the Ramsar Site. The proposal would therefore conflict with the

3 s73(5) Town and Country Planning Act 1990 (as amended)

Appeal Decision APP/W3330/W/21/3287661

<https://www.gov.uk/planning-inspectorate> 4

requirements of the Habitats Regulations, as well as the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

James Blackwell

James Blackwell

INSPECTOR

## **APPEAL DECISIONS – 02 February 2023**

**Site:**

**Application number:**

**Reason for refusal:**