

# APPEAL DECISIONS – 12 SEPTEMBER 2019

**Site:** Land to the North-West of the Plough Inn, Back Lane, Holford

**Proposal:** Erection of 1 no dwelling

**Application number:** APP/H/3320/W/19/3222170

**Reason for refusal:** Appeal Allowed



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## Appeal Decision

Site visit made on 9 July 2019

**by S Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 August 2019**

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### Appeal Ref:

**APP/H3320/W/19/3222170 Back  
Lane, Holford, Somerset TA5 1RY**

- 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 & Mrs T J Ayre against the decision of West Somerset Council.
  - The application Ref 3/16/18/005, dated 4 April 2018, was refused by notice dated 8 August 2018.
  - The development proposed is the erection of a dwellinghouse.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwellinghouse on land at Back Lane, Holford, Somerset TA5 1RY in accordance with the terms of the application Ref 3/16/18/005, dated 4 April 2018, subject to the conditions in the attached schedule.

### Procedural Matters

2. The decision to refuse planning permission was made by West Somerset Council, which ceased to exist on 1 April 2019, following a merger with Taunton Deane Borough Council to form the new Somerset West and Taunton Unitary Authority. Provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 2008 allow for any “plan, scheme, statement, or strategy” prepared by one of the merging authorities to be treated as if “it had been prepared and, if so required, published by the single tier council for the whole or such part of its area as corresponds to the area to which the particular

plan, scheme, statement or strategy relates". The status of the West Somerset Local Plan to 2032 (2016) (LP) has not therefore changed as a result of the merger.

3. The appellant submitted model 3D drawings depicting street scenes, Chartered Landscape Architect appraisal and a topographical survey that were not before the Council at the time of its decision. As the Council and interested parties have, though, had the opportunity to comment on these documents during the appeal process, I have considered them in my decision. Accordingly, no party has been prejudiced.
4. The proposal has also been considered by the Secretary of State in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017). A screening direction has been issued which states that the proposal is not Environmental Impact Assessment development.

## **Main Issues**

5. The main issues are the effect of the development on the character and appearance of the area and the impact upon the living conditions of the occupiers of neighbouring properties by way of privacy.

## **Reasons**

### *Character and appearance*

6. Holford is a small village within the Quantock Hills Area of Outstanding Natural Beauty (AONB). The appeal site is located on Back Lane within the main built form of the village, opposite the Plough Inn and set back from the A39 which runs north-south through Holford. The site is a triangular plot of land which is accessed via the public house car park. A low mix species hedge runs along the boundary to the south dividing the site from the narrow lane which provides access to further residential properties within the village. To the north east, a stone/rendered wall defines the boundary with the car park and to the northwest, the site abuts Glenstone Farm which is separated from the plot by a low wall, high fence and mature hedge. The site is level and slightly elevated from the lane by around 0.5 metres as indicated by the topographical survey.
7. The area is characterised on the east side of the A39 by larger dwellings set back from the road in spacious plots. To the west side, where the site is found, properties are mostly positioned side-on to the road with many bordering the highway. The entrance to Back Lane is dominated by the public house with its principal elevation snug against the road and the converted stables opposite set at an angle. This leads through to a more enclosed setting where the narrow lane is bounded by dwellings, barns, stone walls and hedgerows tight up against the road. There are a variety of building types and forms closer together within plots of varying sizes.
8. Policy SC1 of the LP identifies Holford as a secondary village where small scale development will be permitted subject to criteria. The policy specifies that development within or in close proximity to the contiguous built-up area must demonstrate that it, among other matters, is well related and with safe and easy pedestrian access to existing essential services and social facilities; respects the historic environment; complements the character of the existing settlement; does not generate significant additional traffic movements; and does not harm the

amenity of the area.

9. The site presently makes a very limited contribution to the street scene. It is slightly elevated, physically separated, visually barren and provides no function within the settlement. The proposal is for the erection of a modest sized one and a half storey two-bedroom rendered dwelling under a tiled roof. It would be positioned gable end on to the lane with its frontage facing the entrance to Back Lane. Access via the public house car park would be through the existing gateway in the stone boundary wall, with parking and turning provided within the site.
10. The siting and design of the proposed dwelling would not be at odds with that of the surrounding development. It would have a low ridge height and be constructed and finished with materials to match surrounding buildings. The small footprint of the proposal would be similar to other properties within the immediate surroundings and the plot size is also comparable. The gable end would be visible from the road and would be observed from some properties immediately to the south. However, the proposed dwelling would have a narrow span with a limited height and the proposed natural boundary treatment, which can be the subject of controls through a planning condition, would visually soften the expanse of this side elevation. Consequently, the gable end would not appear overly dominant or be visually harmful.
11. In coming to my conclusion, I have considered the location of the site in the AONB and find that the proposal would conserve and enhance its natural beauty and would not have an unacceptable effect on the character and appearance of the area. As such, the proposal would, in this regard, comply with Policies SC1, SV1 and NH13 of the LP which, among other matters, seek to ensure new development is sustainably sited, complements and positively contributes to the character of the existing settlement.

### *Living conditions*

12. The degree of overlooking from the proposed dwelling to the nearest neighbouring properties would be limited due to separation distances, height of the proposed dwelling and dormer windows, which due to their design, naturally restrict the ease to look out. This coupled with the established vegetation within the gardens and boundaries that provide a good level of natural screening, leads me to conclude that the neighbouring properties would not be overlooked to the degree that the occupiers' privacy would be appreciably compromised.
13. Accordingly, I conclude that the proposal would not significantly harm the living conditions of the neighbouring occupiers with regard to privacy. As such, the development complies in this regard with Policies SC1, SV1 and NH13 of the LP which, among other matters, seek to protect the amenity of neighbours.

### **Other Matters**

14. Comments from interested parties have questioned the appellants' right to access the land from the public highway through the Plough Inn's car park and the boundary with Glenstone Farm. These are not matters, though, that I can consider in my decision.
15. Forge Cottage is positioned on the opposite side of the lane fronting the road parallel to the south. It is acknowledged that the proposed dwelling would be positioned directly to the rear of the cottage, however the distance between the rear elevation of the cottage and the proposed gable end is around 22 metres and

there is an existing garage which is situated in between that would partially screen the view.

## **Conditions**

16. It is necessary to impose the standard three-year time limit commencement of development condition and necessary to impose a condition to require the development to be carried out in accordance with the approved plans in the interests of certainty.
17. A condition to ensure an appropriate landscaping scheme is implemented and maintained is required to safeguard the character and appearance of the area.
18. There is exceptional justification for the removal of specified permitted development rights in the interests of the living conditions of the occupiers of the neighbouring properties, based on my deliberations set out above. Due to the nature of the area, I consider that it would be reasonable and necessary to impose a planning condition relating to construction working hours.
19. Where I have altered the wording of the remaining conditions put forward by the Council I have done so in the interest of precision.

## **Conclusion**

20. For the reasons above, and taking into account all other matters raised, I conclude that the appeal should be allowed subject to the conditions set out in the schedule.

*S Hanson*

INSPECTOR

## **Schedule of conditions:**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
DRAWING NO 200-01 REV B Proposed Site Location and Block Plan  
  
DRAWING NO 200-02 Proposed Plans and Elevations  
  
DRAWING NO 200-03 Parking and Turning Area
  - 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan no. 200-02 Proposed Plans and Elevations.
  - 4) Prior to any ground works commencing there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include details of existing walls, fences, trees, and hedgerows which are to be retained; details of all new walls, fences and other boundary treatments; finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the hard surfacing; and a programme of implementation.
  - 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
  - 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the dwelling house shall be erected other than those expressly authorised by this permission.
  - 7) Construction works shall take place only between 0700 and 1800 on Monday to Friday and between 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
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**Site:** Land off Lime Street, Stogursey, Bridgwater, TA5 1QL

**Proposal:** Application for approval of reserved matters following Outline Application 3/32/17/008 for the erection of an agricultural workers dwelling

**Application number:** APP/H/3320/W/18/3215240

**Reason for refusal:** Appeal Dismissed



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## Appeal Decision

Hearing held and site visit made on 24 July 2019

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 August 2019**

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### Appeal Ref: APP/H3320/W/18/3215240

#### Land off Lime Street, Stogursey, Bridgwater TA5 1QL

- The appeal is made under section 78(1)(b) of the Town and Country Planning Act 1990 as amended against a refusal to grant approval to details required by a condition of an outline planning permission.
  - The appeal is made by Mr M Plowright against the decision of West Somerset Council.
  - The application Ref 3/32/18/001, dated 12 January 2018, sought approval of details pursuant to condition 1 of planning permission Ref 3/32/17/008, granted on 7 November 2017.
  - The application was refused by notice dated 4 May 2018.
  - The development proposed is the erection of an agricultural workers dwelling (in compliance with the details shown on plans 2175/01, 2067/01, 2067/02, 2067/03 2067/04, 2067/05).
  - The details for which approval is sought are layout, scale, appearance, access and landscaping (the 'reserved matters').
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## Decision

1. The appeal is dismissed.

### Preliminary matters

2. On 1 April 2019 West Somerset District Council merged with Taunton Deane Borough Council, forming Somerset West and Taunton Council. Nevertheless, until superseded, the existing development plan documents of the former Councils remain extant. Each proposal must be determined on its particular merits in accordance with the development plan unless material considerations indicate otherwise.
3. In this instance the development plan includes policies of the West Somerset District Plan (adopted 23 November 2016, the 'LP'). I understand work underway by Stogursey Parish Council preparing a neighbourhood plan is yet to advance to

a stage such that it may be accorded significant weight. I have also had regard to various other material considerations including the National Planning Policy Framework (updated 19 February 2019, 'NPPF') and the Planning Practice Guidance ('PPG', including as updated on 22 July 2019), and to a previous appeal here in 2013.<sup>1</sup> In so far as necessary and relevant to this case there has been appropriate opportunity for comment on that context.

4. Following permissions for a temporary dwelling dating back to 2010 the Council granted outline permission for a permanent agricultural workers' dwelling via decision notice dated 7 November 2017 (Ref 3/32/17/008, the 'original

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<sup>1</sup> PPG Reference ID: 67-010-20190722 in particular, and appeal Ref APP/H3320/A/13/2197662.

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permission'). At that stage details of access, appearance, landscaping, layout and scale were reserved for future consideration (the 'reserved matters'). The substantive dispute between the main parties relates to the scale of the dwelling now proposed, in so far as whether or not that would be consistent with the terms of the original permission and otherwise acceptable. Secondly, and somewhat connected, is a dispute regarding whether or not the dwelling proposed could be constructed and financed without undermining the ongoing viability of the agricultural enterprise or holding (known, curiously, as 'Lime Street Buildings').

## **Main issues**

5. Based on all I have read, heard and seen, the main issues are whether or not (i) the scale of the dwelling proposed is commensurate with the agricultural needs that justified the original permission, (ii) the ongoing viability of the agricultural enterprise would be unacceptably compromised by consequence of undertaking the development as is now proposed.

## **Policy context**

6. Pursuant to LP policy SD1, which sets out how the Council will apply the presumption in favour of sustainable development, policy SC1 guides development towards a settlement hierarchy broadly in line with the scale and function of settlements. Whilst there is some flexibility in respect of development around settlement boundaries, LP policy SC1 sets out that development in the open countryside will be considered under policy OC1. Policy OC1 explains that development in the open countryside is not generally appropriate, barring several exceptions. One such exception, reflective of NPPF paragraph 79(a), is where it is essential for a rural worker to live in such a location.
7. The purpose of that policy is stated to be principally in order to 'protect the open countryside from damaging development...'. Likewise NPPF paragraph 170 sets out how planning should recognise the intrinsic character and beauty of the countryside, and to the same end certain permitted development rights for agricultural buildings require their removal if they become redundant in time.<sup>2</sup> Policies of the development plan, and equally of the NPPF, pull in different directions. There is also support via LP policy OC1 for development 'beneficial for the local community and local economy'. Similarly NPPF paragraph 83 supports the sustainable growth and expansion of all types of businesses in rural areas.
8. Explanatory text to LP policy OC1 clarifies that the justification for an essential

need should include both ‘a functional need for a dwelling in that location and economic evidence to demonstrate the potential viability of the scheme’. That phrasing is similar to that of superseded Planning Policy Statement 7 and Annex A to it. Although no longer current policy, approaching the issue of whether or not an essential needs exists in those terms has to some extent become established practice. It is moreover, in my view, logical to consider the nature of the work that the occupant(s) of the proposed dwelling would be engaged in, its intensity, and the likely viability of the enterprise in assessing

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<sup>2</sup> Schedule 2, Part 6 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

whether or not an ‘essential need’ has been demonstrated. Similar terminology appears in the PPG.<sup>3</sup>

9. I acknowledge that there is no floorspace threshold, whether definitive or indicative, in the LP or otherwise regarding the scale that may be appropriate for a rural worker’s dwelling here. That is unlike the situation elsewhere. Paragraph 10.58 of the Somerset Local Plan supporting policy HG9 (adopted March 2015) has been brought to my attention by the appellant in this respect by way of example. That sets out as a guideline that a floorspace of 175 square metres is likely to be suitable in respect of most holdings. However the characteristics of agriculture, its prevailing scale, and the nature of associated farmhouses may very well differ in other locations to that which is typical in this area. At best, that floorspace is a rough proxy. Moreover I understand from discussion during the hearing that different indicative thresholds are given in different areas.
10. Contrary to the position of the appellant, in my view whether or not an ‘essential need’ exists must relate not only to the need for a dwelling but to the particular nature of that dwelling. That is little more than a statement of logic regarding the relationship of justification on the one hand with scale on the other. In the absurd a twelve bedroom property would not cater solely for the needs of a single farm worker (and likely have an undue effect on the character of the countryside). Whilst arrived at independently, that logic is essentially reflected in paragraph 17 of the previous inspector’s decision. It is also articulated in the supporting justification for LP policy OC1: ‘the proposed accommodation should be commensurate with the established functional need for accommodation in that location’. Whilst the correlation need not be exact, in my view there should be a reasonable linkage between the nature and intensity of work and associated accommodation requirements.

## Reasons

11. Whilst policy and financial circumstances have moved on, the location, surrounding context, and nature of the enterprise and holding to which the proposal relates is largely the same as that described by the inspector who determined the 2013 appeal. There is no challenge to the veracity of any points made in that decision. I note in particular paragraph 7 of her decision in addition to paragraph 17 cited above. Those elements set out, in summary, the general position that it is the objectively established needs of a rural worker to reside in a particular location that is the basis for determining whether such development is acceptable rather than personal preferences. Individuals may work in varying ways depending on their



character, abilities, or other factors.<sup>4</sup>

12. The appeal site is a parcel of land of approximately 0.1 ha cut out of the wider Lime Street Buildings holding. That holding now amounts to some 125 ha of land owned by the appellant and 281 ha of rented land. Those figures align with the extent of the holding described in the 2013 appeal, save for an additional 8 ha which I understand was purchased in 2018. The land held comprises a number of scattered parcels of land. The appeal site is, however, close to the location of a mobile home which traces its origins back to 2010 and also to substantial barns. Notwithstanding the dispersed arrangement of the

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<sup>3</sup> Reference ID: 67-010-20190722.

<sup>4</sup> That is notwithstanding inevitable variety in practice, as referenced in the Nix Farm Management Pocketbook.

holding I am told that the adjacent barns are the only cluster of buildings available for storage and bringing livestock under cover.

13. The appeal site is broadly level and laid to grass. It is accessed via and falls near Shurton Lane, a narrow lane which tracks northwards from the limits of the established built form of the village of Stogursey some 250 metres away around Northfield Close. The topography declines gently from Shurton Lane through the appeal site towards a footpath enclosed by established hedgerows which tracks beside the Stogursey Brook and passes a water recycling centre. The surroundings to the appeal site are strongly rural in character. They are characterised by a patchwork of generally good-sized fields cut by established hedgerows, with only occasional buildings and farmsteads dotted about. There are on occasion expansive views of the landscape. From the footpath which runs perpendicular to Shurton Lane north of the appeal site there are some views towards Hinkley Point and reciprocally towards Stogursey; the spire of the Church of St Andrew being visible in the distance above trees.
14. Stogursey is defined as a primary village via LP policy SC1, where 'limited development' is accorded in-principle support. I am told that the appeal site falls around 460 metres, or less, from the centre of the settlement and various services and facilities there. The appellant has brought to my attention case law relating to the application of NPPF paragraph 79 and, specifically, the implications of the word 'isolated' in that context.<sup>5</sup> However it was clarified at appeal that such references were made solely by way of illustrating the context of the appeal site; it was not put to me that the proposal should be considered other than with reference to LP policy OC1 and NPPF paragraph 79. Indeed to approach this decision otherwise would go beyond the remit of this appeal and revisit matters settled in the determination of the original permission.

The scale of the dwelling

15. I understand that the enterprise here has built up since around 1967. It is now such that, at any one time, there may be around 375 cows of varying ages present alongside about 1400 breeding ewes. The livestock headcount has not increased significantly compared to 2013.<sup>6</sup> The enterprise is therefore intrinsically reliant on the successful breeding, calving and nurturing of a significant number of livestock. Whilst I will return to the quantity of work generated by the herd size, those activities will inherently generate the need to closely monitor the wellbeing of animals, assist during birth, and to treat various pathogens. Undoubtedly the

nature, intensity, unpredictability and toil involved in such work generates a need for on-site accommodation.

16. The original permission was supported by an Agricultural Appraisal of 2017 ('AA'), which gave the same livestock figures as cited above.<sup>7</sup> It is a broadly accepted benchmark that a rural worker may reasonably undertake 275 days' work a year. Many, of course, work significantly longer in reality. That metric is commonly abbreviated as standard man days or 'SMD', which I have adopted for brevity. The AA calculates that an enterprise of this scale and intensity would generate 1,279 SMD annually. That equates to 4.6 'labour units', i.e.

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<sup>5</sup> Braintree District Council v SSCLG & Ors [2017] EWHC 2743 Admin and the subsequent Court of Appeal judgement handed down on 28 March 2018.

<sup>6</sup> Paragraph 7 of the previous appeal gives an approximate figure of 1700.

<sup>7</sup> Undertaken by Sheamus Machin FRICS FAAV.

individuals required to run the holding on a continuous basis. I note that excludes a 15% margin typically included for general upkeep.

17. That evidence is not challenged by the Council. However in practice it is principally the appellant along with his son and grandson who operate the holding. I understand that they undertake the majority of the work themselves, aside from occasionally contracting specialists or labour for intensive tasks as needs be. I will return to that. Therefore in practice the objectively calculated labour requirements of 4.6 or more individuals is being undertaken by only three people. If a 15% upkeep margin were to be included, each member of the family referenced above would need to work around 490 SMD a year (not far off double the standard metric of 275 SMD).
18. It was established as common ground between the main parties during the hearing that the dwelling proposed would have a gross internal area of around 222 square metres (irrespective of the function that certain areas are intended to fulfil).<sup>8</sup> The Council contends that is beyond what is reasonably required. That figure also appears to exceed the indicative figure given in the Design and Access Statement supporting the original permission ('DAS'), namely that the 'residential accommodation' would amount to no more than 180 square metres floorspace. The appellant's distinction between a 'primary' agricultural workers' dwelling and any other form of agricultural dwelling is not an established phrase in policy or guidance.
19. If the combined floorspace of the single storey elements of the proposal (including a utility room, office, shower room and garage) are deducted from 222 sqm, a residual figure of around 174 sqm results. The appellant contends that only that residual should be seen as 'residential accommodation', and therefore by extension that the present scheme would be compliant with the terms of the DAS. I disagree. That suggests some sort of arbitrary separation whereby a 'principal' rural worker occupying the property would never enter the property via the utility room, or that he would be engaged solely in management and administration rather than getting his hands dirty. That argument also suggests that none of those elements of the property would have a hybrid use, being part residential space and part used by farm workers.

20. Nevertheless in respect of the outline permission scale was a reserved matter. I understand there is no explicit reference to the figure of 180 sqm in the Council's assessment of the former scheme, albeit that it may have been taken into account in that context. The subsequent application for approval of details, the subject of this appeal, is the avenue through which that matter should properly be assessed. Moreover in practice some of the floorspace within the dwelling proposed would be used by rural workers engaged in tending to livestock and undertaking other activities who are not occupants of the dwelling proposed. I heard, and accept, that such activities are presently undertaken with some inconvenience given the confines of the mobile home.
21. It is commonplace also for farms to have separate office buildings and for dwellings to have detached garages. In this instance those elements are an integral part of the house whereas they could have readily been designed as

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<sup>8</sup> The reference to 250 square metres floorspace in the associated officer report being an approximation rather than precise calculation.

free-standing elements, in which case the functional separation would have been clearer (although, potentially, visual effects greater). Furthermore I have set out above that the holding is substantial. The intensity of work generated is sufficient to provide full-time employment for between 3 and 5 individuals. In that context a dwelling with a floorspace of around 222 sqm comprising four bedrooms, with some discount for elements that would be used from time-to-time for farm management or by non-resident workers, would not be excessive in this specific instance.

22. Moreover the fundamental purpose of policy OC1 is to ensure that the character of the countryside is protected. I have noted the concerns of Stogursey Parish Council regarding the visual effects of the scheme, and accept that the dwelling proposed would be visible from Shurton Lane and nearby rights of way on occasion. It would also introduce built development exceeding the scale of the mobile home currently on site, and be apparent from several surrounding public footpaths around the area which I walked during my site visit (albeit partially and fleetingly in many instances).
23. However, as set out above, the appeal site is relatively flat. The intended location of the dwelling is also reasonably set back from Shurton Lane which in this location is flanked by established hedgerows. That would reduce its visual prominence. The form of the dwelling proposed would also be partially obscured from certain vantage points by the presence of nearby agricultural barns. By virtue of the topography, established hedgerows and trees in the landscape, and the separation distance from Stogursey, in my view the effect of the development would be highly localised. In that context the dwelling proposed would not appear excessive. I furthermore note that the appeal site is not within an area designated on account of its natural character, and that landscaping would assist in enabling the scheme to blend in with its surrounding over time (which could be secured via appropriately worded conditions specifying necessary details were the development otherwise acceptable).
24. I therefore concur with the Council that no substantive visual or landscape harm

would result. That is the underlying aim which OC1 seeks to achieve (and, incidentally, reinforces the rationale for essential need being related to the nature of associated accommodation). Whilst I accept the scale is generous in relative terms compared to the prevailing size of new homes and that which would be needed in respect of many agricultural enterprises, with regard to the particular circumstances here and the surrounding context, I conclude that the scale of the dwelling proposed is broadly commensurate with the agricultural needs that justified granting the original permission and otherwise acceptable. I therefore find no conflict in this respect with the relevant provisions of OC1 or NPPF paragraphs 79 or 170.

#### Financial viability

25. Since 2013 the profitability of the enterprise has improved, as reflected in the AA. In the last three financial years ending March 2019, the net income returned has increased from around £30,561 to £33,936 to £39,706. Proportionately those figures represent around a 11% increase in profitability 2017-18 and 17% 2018-19, a solid trajectory. That is notwithstanding greater variance in preceding years, and some figures with limited explanation (for example a 93% increase in contracting costs between 2017 and 2018). I am told profitability has improved principally as a result of paying down existing debts, receiving greater funding from the Basic Payment Scheme, and fewer unforeseen circumstances and one-off expenses occurring.
26. However that increase in turnover must plateau at some point. As reasoned above, the extent of the holding and number of livestock has remained effectively constant since 2013. It has not been argued that the appellant has future plans to expand the enterprise. The enterprise is still indebted, with loan interest that appears to now stand at around £17,311 annually. It is also prudent to make some contingency for unforeseen circumstances, whilst I accept that there is nothing in the foreseeable future to indicate that it would not be possible to achieve the current net return from the enterprise in future years.
27. Setting aside those qualifiers, at present an annual return of £39,706 shared equitably between three individuals would amount to £13,235 each. Many agricultural workers accept lower levels of income than standard minima, however that is well below the National Minimum Wage ('NMW', and also below the lower figures last set in that regard by the Agricultural Wages Board in 2013). Moreover in practice that sits awkwardly with the justification that the enterprise generates an empirical need for between 4.6 and 5 labour units. £39,706 cut five ways is around £7,941. That is approximately half the NMW. Whilst I accept margins are tight in agriculture, significant investment has been undertaken by the appellant, and debt is beneficial in some circumstances, based on the evidence before me the operating margins in this instance are exceptionally tight or untenable if standard methodologies and assumptions are applied.
28. At the time of the hearing I had a letter before me from NatWest dated 25 October 2018. That indicated they were prepared to finance some £160,000 of the anticipated cost of constructing the dwelling as represented on the plans listed in the banner heading. The anticipated cost of the dwelling, with some exclusions, is given in appendix three to the appellant's statement of case prepared by a chartered surveyor as £264,900.70.<sup>9</sup> I understand that some works have been undertaken amounting to around £9,000, and the appellant may have more

savings than initially predicted. However that first letter did not specify the terms on which the loan was offered. The absence of that information posed a fundamentally unanswered question as to the potential effect of repayments on future financial projections.

29. At my request the appellant submitted further correspondence from NatWest dated 25 July 2019. That second letter indicates the loan would be on a variable rate basis currently standing at 4.62%.<sup>10</sup> Indicatively that results in an annual repayment total of around £10,773.24. Were that discounted from income for 2019, the enterprise would have a net profit of £28,933, returning around £9,644 to three individuals or £5,787 to five workers. That repayment schedule is intended over 25 years. Even with significant existing capital, on that basis I cannot conclude that the dwelling could be constructed as proposed and the enterprise continue to be viable in the foreseeable future. Even with

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<sup>9</sup> A figure the Council accept is broadly in the right territory.

<sup>10</sup> 3.87% plus Bank of England Base Rate of 0.75% presently.

increased profitability and no unforeseen circumstances there is a very real likelihood that such costs could not be sustained.

30. Following a previous letter on behalf of Thomas Westcott Chartered Accountants of 30 October 2018 attesting to ability of the enterprise to finance a loan sufficient to enable the construction of the dwelling proposed, a further letter from that company on behalf of the appellant was submitted on 31 July 2019 after the hearing had closed. The Council is of the view that I should disregard the second Westcott letter on the grounds of procedural fairness. Bluntly, whilst I accept the intention of that letter was for clarification, there is neither clear justification as to why that information has only become available latterly nor detailed evidence in support of the figures therein quoted. Nevertheless the substance of that letter does not alter my conclusions.
31. The second Westcott letter explains that the farm business has three main workers Mr M Plowright, Mr J Plowright and Mr M McGuinness (father, son and grandson). For the year ending 31 March 2019 contracting expenses are given as £31,516 in the accounts. Of that figure I am told Mr McGuinness received £15,992. Therefore an element recorded under the heading of 'purchases' for Lime Street Buildings actually went to an individual engaged in the running of the enterprise. That, in effect, buoys up the financial position (exceeding the reduction that would arise were the NatWest building loan taken out). However from the accounts, 2019 is an atypical year in terms of contracting costs. The figure for 2018 appears to be £22,242 and for 2017 £12,472. It is therefore not clear whether reliance can be placed on that income for Mr McGuinness, and there is no robust evidence before me as to the factors that affect that level of income in practice (for example whether contracting expenses are cyclical or likely to remain constant in the future).
32. I acknowledge that the enterprise has existed for many years based on the energy and grit of the appellant and his family. I accept that profitability is improving, and that a loan offer for building the proposed house has been made. However even as they stand operating margins are very tight and would be reduced still further by the loan proposed, significantly below reasonable minima. Consequently I am not satisfied that the proposal is justified in financial terms in accordance with the

relevant provisions of LP policy OC1, NPPF paragraph 79 and with regard to the approach in the PPG. Allowing the scheme as it stands would undermine the premise upon which outline permission was originally justified.

## **Other matters and conclusion**

33. The reasoning in respect of the main issues leads me to the question that, if no harm to character and appearance would result, is it legitimate for planning to concern itself with the future viability of an agricultural enterprise? My view is yes. Where an essential need exists is one exception to the general position that new isolated homes in the countryside should be avoided. That approach exists, amongst other things, in order to protect the intrinsic character of the countryside. Therefore the context in which development here is justified is fundamentally premised on their being a demonstrable need. The existence of that need sets the benchmark for determining the acceptability of any resultant visual effects.
34. As reasoned above I am not satisfied that the scheme could be undertaken in a manner so as to avoid undermining the viability of the enterprise, the basis on which outline permission was granted, and thereby changing the context in which effects to character and appearance are assessed. The proposal would undoubtedly entail benefits to the appellant, his living conditions and the facilities available to farm workers. However those benefits do not amount to an essential need, the enterprise has evidently persisted for some considerable time, and profitability improved, in the absence of a permanent dwelling. There is no robust evidence as to any alternative approaches that have been considered and discounted for whatever reason, for example less costly schemes. I mention those latter points only in so far as, had there been compelling evidence, that may have carried weight in favour of allowing the appeal.
35. Nevertheless, for the above reasons, having taken account of the development plan as a whole, the approach in the NPPF, and any other relevant material considerations, I conclude that the appeal should be dismissed.

*Thomas Bristow*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANTS:

M Plowright  
C Plowright

Edward Persse MRTPI  
Sheamus Machin FRICS  
FAAV Kelly Davies

Appellant  
Appellant

EJFP Planning Ltd.  
Agricultural Consultant  
Thomas Westcott Chartered  
Accountants

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Bird

Somerset West and Taunton Council

INTERESTED PERSONS:

J Ody

On behalf of Stogursey Parish Council

## HEARING DOCUMENTS

- 1) Unaudited business accounts for 31 March 2019.

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**Site:** Pemswell Lodge, Pemswell Road, Minehead, TA24 5RS

**Proposal:** Variation of Condition No 02 (approved plans) of application 3/21/15/026

**Application number:** APP/H/3320/W/19/3225200

**Reason for refusal:** Appeal Allowed



The Planning Inspectorate

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## Appeal Decision

Site visit made on 9 July 2019

**by Matthew Jones BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 August 2019**

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### Appeal Ref: APP/H3320/W/19/3225200

#### Pemswell Lodge, Pemswell Road, Minehead TA24 5RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr J Freeman against the decision of West Somerset Council.
- The application Ref 3/21/18/078, dated 17 October 2018, was refused by notice dated 12 February 2019.
- The application sought planning permission for a two-bedroom dwelling in the garden of Pemswell Lodge without complying with a condition attached to planning permission Ref 3/21/15/026, dated 24 April 2015.
- The condition in dispute is No 2 which states that: '*The development hereby permitted shall be carried out in accordance with the approved drawings: Drawing Numbers: (A4) Location Plan (A4) Block Plan (A3) DrNo 140101/2A Proposed Ground Floor Plan (A3) DrNo 140101/3A Proposed First Floor Plan and Section (A3) DrNo 140101/4B Proposed Elevations (A3) DrNo 140101/5A Proposed Street/Garden Scenes and Roof Plan (A4) DrNo 140101/Samples.*'

- The reason given for the condition is: *'For the avoidance of doubt and in the interests of proper planning.'*
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## Decision

1. The appeal is allowed and planning permission is granted for a two-bedroom dwelling in the garden of Pemswell Lodge at Pemswell Lodge, Pemswell Road, Minehead TA24 5RS in accordance with the terms of the application Ref 3/21/18/078 dated 17 October 2018, without compliance with condition No 2 previously imposed on planning permission Ref 3/21/15/026 dated 24 April 2015, but subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1826/200, 1826/201, 1826/202.
  - 2) Within three months of the date of this decision, details of hard and soft landscape works shall be submitted to the local planning authority. These details shall include: boundary treatments; vehicle turning/parking layouts and finishes; details of bicycle storage; hard and soft surfacing materials. The landscaping works shall be carried out in accordance with the approved details and timed in accordance with an agreed implementation programme. The completed scheme shall be retained in accordance with the approved details.
  - 3) No vehicular access shall be formed between the curtilage of the dwelling hereby approved and Pemswell Lane in perpetuity.

## Procedural Matters

2. The application subject to this appeal is made under Section 73A of the Planning Act for minor material amendments. It seeks revised but not substantially different designs to a dwelling approved in April 2015. This is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans that reflect an amended design.
3. At my visit I observed that the development has commenced, with the dwelling at an advanced stage of construction, with a dormer added to its rear roof slope and its lower ridge higher than as approved.

## Background and Main Issues

4. The sought amendments include enlarging the lower roof through raising the ridge by 1m and the installation of a dormer to the south elevation. The main issues are therefore the effect that varying the condition would have on:
  - The character and appearance of the area, with particular regard to the Higher Town Conservation Area; and,
  - The living conditions of the occupants of Orchard Cottages, with reference to privacy and light.

## Reasons

### *Character and appearance*

5. The appeal property is sited within land in the highly regarded area of Higher Hill, outside of but largely surrounded by the Higher Town Conservation Area (CA). I



therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of this part of the surrounding CA is derived from its rich historic built environment of mainly residential buildings which are steeped within a valley context, connected by narrow lanes and public ways, with views limited by severe topography and the density of the buildings.

6. The house is seen from the south in limited views between other properties and against a wooded backdrop. When visible the property is seen to follow the clearly stepped pattern of property heights along Pemswell Lane and, given such, its modest increase in height does not significantly increase the prominence of the building nor harm any sense of retained openness in this particular part of Higher Hill. The dormer sits comfortably within the rear elevation, leading the building to maintain a proportionality and design which allows it to harmonise with the simple character and appearance of the area and the setting of the CA.
7. I therefore conclude on this issue that the proposed development does not have a harmful effect on the character and appearance of the area, with particular regard to the Higher Town Conservation Area. It accords with the heritage and design aims of Policies NH1, NH2 and NH13 of the West Somerset Local Plan to 2032 (adopted 2016) (WSLP), Policy BD/3 of the West Somerset District Local Plan (adopted 2006) and the National Planning Policy Framework (the Framework).

#### *Living conditions*

8. Due to the topography between the sites, it is possible to look towards the rear elevation of Orchard Cottages from the rear garden and ground and first floor of the appeal property, with elevated positions within the dwelling also allowing overlooking towards the private garden areas serving these neighbouring houses. The large, full height opening within the first floor of the rear gable offers a particularly significant opportunity for overlooking.
9. Given the circumstances, the effective substitution of approved roof lights with a dormer window has caused negligible additional overlooking towards Orchard Cottages. Further, given the location of the dwelling to the north of these properties, the small increase in height has had a very limited effect with regard to light.
10. I therefore conclude on this issue that the proposal does not have a significant additional harmful effect on the living conditions of the occupants of Orchard Cottages, with reference to privacy and light. It is compliant with the requirements of Policy NH13 of the WSLP and the Framework insofar as they require development to provide an acceptable standard of residential amenity.

## **Conditions**

11. The Council has only suggested a time condition and an accord with plans condition in the event that I was minded to allow the appeal. However, as development has begun, a time condition is unnecessary. In addition, given the evidence relating to previous decisions at the site it is necessary to impose a landscaping condition in order to ascertain boundary treatments, amenity space, parking and turning areas for cars and bicycle storage. As highway matters in relation to the previous scheme remain relevant, it is necessary in the interests of highway safety to ensure that no vehicular access is created on to Pemswell Lane.

## Conclusion

12. For the reasons given above, and taking all matters into account, the appeal should succeed.

*Matthew Jones*

INSPECTOR

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**Site:** Combe Hayes, Taunton Road, Bicknoller, Taunton, TA4 4EH

**Proposal:** Outline application with all matters reserved, except for means of access, for the erection of 2 no dwellings

**Application number:** APP/H/3320/W/19/3228014

**Reason for refusal:** Appeal Dismissed



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## Appeal Decision

Site visit made on 22 July 2019

**by M Harris BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 August 2019**

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**Appeal Ref: APP/H3320/W/19/3228014**

**Combe Hayes, Taunton Road, Bicknoller TA4 4HE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr & Mrs A King against the decision of West Somerset Council.
  - The application Ref 3/01/18/007, dated 15 May 2018, was refused by notice dated 12 February 2019.
  - The development proposed is described as "this application seeks outline consent (access only) for the erection of two dwellings".
- 

## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The application was in outline with all matters other than access reserved for future consideration. A proposed site plan was provided indicating how two 3- bedroom detached dwellings with garages, parking and a turning area could be accommodated on the site. I have had regard to this in reaching my decision.

## Main Issues

3. The main issues are:
  - i. whether or not the site is an appropriate location for residential development having regard to local and national policy for the delivery of housing; and
  - ii. the effect of the proposal on the character and appearance of the rural area.

## Reasons

### *Location of development*

4. The appeal site is located approximately 200 metres beyond the built-up area of Bicknoller. It is identified within the settlement hierarchy set out in Policy SC1 of the West Somerset Local Plan to 2032, adopted November 2016 (Local Plan) as a primary village and offers a range of services and facilities, including a shop, pub and church.
5. The Council's wider strategy is to focus development within the main centres in recognition that these are the more sustainable locations with the necessary services and facilities to support residents. The approach also serves to protect the areas of open countryside.
6. In settlements such as Bicknoller the strategy seeks to ensure that development is sited within or in close proximity (defined as 50 metres) to the contiguous built-up area. The basis of this strategy is to ensure that development can appropriately support those services and facilities within the settlements, in part through ensuring that there is safe and easy pedestrian access to them. The Council's approach reflects the National Planning Policy Framework (the Framework) insofar as it expects development to be centred on appropriate locations and in doing so to limit the need for travel by private car by promoting the use of sustainable modes of transport.
7. As a result of the location beyond the 50-metre buffer, for the purposes of planning policy the site is within the open countryside, as defined by Policy OC1 of the Local Plan where development will only be permitted in exceptional circumstances, including, but not limited to provision for rural workers and meeting identified local housing needs.
8. Whilst the proposed dwellings would infill the gap between existing properties, irrespective of this there is nothing before me to indicate that the proposal falls within the exceptional circumstances set out in Policy OC1. As a result, it is my assessment that the site is located within open countryside where development is not permitted except for in those circumstances.
9. Turning to the facilities and services in Bicknoller, these are some distance from the appeal site. The evidence indicates that the community shop on Honey Row Lane is over 900 metres from the site along narrow, hedge lined rural roads (including Dashwoods Lane and Church Lane) which lack footway provision and street lighting. Prior to reaching these roads, it would be necessary to cross the A358 which has no pedestrian refuge to facilitate safe crossing. Whilst there is an ability to use the footway along the A358 to reach a bus stop, the evidence indicates that the frequency of services is limited.
10. Whilst I note that there was no objection to the proposal on highway safety grounds, the nature of the local circumstances is such that in my planning judgement I do not

consider it likely that future occupiers of the proposed dwellings would walk or cycle to the village, particularly if they were less mobile or during periods of inclement weather. It is my conclusion that the aim to reduce the reliance on the private car is not supported by this proposal.

11. For these reasons, the site is not an appropriate location for residential development. It would fail to comply with Policy OC1 of the Local Plan which seeks to resist development in the countryside in the absence of exceptional circumstances. It would also conflict with Policies SC1: 4A and 4B insofar as they require development to be well related to existing services and facilities and for there to be safe and easy pedestrian access to them.

### *Character and appearance*

12. The proposed dwellings would be sited between the host property and a terrace of residential dwellings, accessed via a short stretch of elevated highway running parallel to the A358. There is existing vegetation on the site boundary and between the A358 and layby.
13. The existing properties fall outside of the contiguous built-up area of Bicknoller and are visually distinct from the village by virtue of the tree and hedge lined edges to the highways. In policy terms, as noted above, the location falls within open countryside.
14. Beyond the site along the A358, development is limited to individual dwellings or farmsteads and ribbons of a small number of dwellings separated by agricultural fields, all of which contribute to the open, undeveloped setting of the landscape.
15. Whilst limited to two proposed dwellings, the introduction of buildings in this location would erode the low density, rural pattern of development and by virtue of developing within the existing gap between the properties would result in an intensification of development.
16. For these reasons, the proposals would have a harmful effect on the character and appearance of the rural area and fail to complement the environment and character of the existing settlement. This would be contrary to Local Plan Policies OC1 regarding protecting the countryside from development unless it is serving a specific purpose relating to rural/tourism businesses or meeting affordable housing needs and SC1 4C in respect of ensuring that development compliments the character of existing settlements.

## **Conclusion**

17. For the reasons set out above, the appeal is dismissed.

*M Harris*

INSPECTOR

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**Site:** 5 Mountway Road, Bishops Hull, Taunton, TA1 5LR

**Proposal:** Erection of a triple car port/garage to the front of 5 Mountway Road, Bishops Hull

**Application number:** APP/D3315/D/19/3228324

**Reason for refusal:** Appeal Dismissed



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## Appeal Decision

Site visit made on 30 July 2019

**by S Shapland BSc (Hons) MSc MILT**

an Inspector appointed by the Secretary of State

**Decision date: 16 August 2019**

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**Appeal Ref: APP/D3315/D/19/3228324**

**5 Mountway Road, Bishops Hull, Taunton, Somerset TA1 5LR**

- 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 Kieran Roe against the decision of Taunton Deane Borough Council.
  - The application Ref 38/19/0082, dated 14 March 2019, was refused by notice dated 03 May 2019.
  - The development proposed was originally described as "Triple Car-port/Garage".
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Council has altered the description of the development on the decision notice to read "Erection of a triple car port/garage to the front of 5 Mountway Road, Bishops Hull". The appeal form submitted by the appellant has also altered the description to read "Erection of triple garage". I have taken the description of the development from the Council's decision notice as this is a more precise description of the development, and I have considered the appeal on this basis.

### Main Issue

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

### Reasons

4. The appeal site is a detached dwelling located in an established residential area. Properties on this side of Mountway Road are a mixture of semi and detached properties, which are all set back from the edge of the public highway. The set back distance for these properties is relatively uniform, which gives the

appearance of a continuous unbroken building line along the road. There are a variety of boundary treatments for these properties, including bricked walls, fencing and hedgerows. However, with the set back distances of properties along the road the street scene feels spacious and open.

5. The appeal property currently has a large open gravelled parking area to the front of the dwelling. The appeal scheme proposes the construction of a large garage in this space in front of the property, which would be orientated away from the host property. As such the building would protrude a considerable distance from the established building line and introduces built form into a currently open space at the front of the property. This is out of keeping with the existing form and pattern of development and causes harm to the character and appearance of the area. Furthermore, introducing built form in this location would remove the spacious nature of the front of the property, to the detriment of the overall street scene.
6. The appeal property benefits from a high hedgerow along the front boundary which would go some way to screen the proposed garage. However, the proposal is higher than this hedgerow, and given the open nature of the front spaces along Mountway Road the proposal would still be visible from several points on the public highway.
7. Accordingly, I find that the proposal would harm the character and appearance of the area. As such it conflicts with policy DM1 of the Adopted Taunton Deane Core Strategy 2011-2028. This policy seeks, amongst other things, to ensure that the character and appearance of the street scene is not harmed by development.
8. I recognise that there have been no objections from neighbours in respect of the proposal. The appellant requires the proposed garage to provide cover for his vehicles to aid with security, as well as providing storage for additional garage items. There is no other space on the property to provide similar storage space. However, such personal needs and circumstances do not outweigh the harm I have identified from the proposals.
9. I note that the appellant would be willing to consider a smaller garage and has requested clarification over the scale of development that would be acceptable. I can only consider the appeal on the basis of the plans before me, and it is not within the remit of this appeal to determine if a smaller scheme would be acceptable.
10. The appellant has drawn my attention to No 1 Mountway Road, which has been extended from a 3 to 5-bedroom bungalow. I have not been provided with any substantive details of that proposal, however it was evident from my site visit that the street scene on that side of the road differs from that of the appeal site. I do not consider that a residential extension and a new garage are directly comparable, and I can therefore give little weight to this and do not consider this matter outweighs the harm I have otherwise identified.

## **Conclusion**

11. For the reasons given above the appeal is dismissed.

**Site:** Higher House Farm, Huntham, North Curry, TA3 6EF

**Proposal:** Permanent Residential Use at Higher House Farm, Huntham, North Curry

**Application number:** E/0178/36/13

**Reason for refusal:** Enforcement Appeal is Quashed



The Planning Inspectorate

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## Appeal Decisions

Site visit made on 30 July 2019

**by Jessica Graham BA(Hons) PgDipL**

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

**Decision date: 22 August 2019**

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**Appeal A: Ref APP/D3315/C/18/3214852**

**Appeal B: Ref APP/D3315/C/18/3214853**

**Land at Higher House Farm, Huntham, North Curry, Taunton TA3 6EF**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - APPEAL A is made by Mr Peter Kemp (now deceased), and APPEAL B by Mrs Anne Kemp, against an enforcement notice issued by Taunton Deane Borough Council (now Somerset West and Taunton Council).
  - The enforcement notice was issued on 1 October 2018.
  - The breach of planning control as alleged in the notice is "The use of the barn as a permanent dwelling in breach of condition 03 of planning permission 36/2007/016. Condition 03 is as follows: The occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in total in any period of 12 weeks. A register of holidaymakers shall be kept and made available for inspection by an authorised officer of the Council at all reasonable times. Reason: The accommodation provided is unsuitable for use as a permanent dwelling because of its limited size, isolated location and inadequate facilities on site and the Local Planning Authority wish to ensure the accommodation is available for tourism in accordance with Taunton Deane Local Plan Policy EC23."
  - The requirements of the notice are
    1. Cease use of the holiday let building as a permanent residential dwelling
    2. Cease use of the land edged red as domestic curtilage and remove all domestic items and paraphernalia (currently within the area edged blue on the plan) from the land.
  - The period for compliance with the requirements is nine months.
  - The appeals are proceeding on the grounds set out in section 174(2)(c),(d) and (f) of the Town and Country Planning Act 1990 as amended.
-

## Decision

1. The enforcement notice is quashed.

## Reasons

2. The enforcement notice concerns an alleged breach of a condition attached to a previously granted planning permission. In such cases, the purpose of the notice should be to make the development comply with the conditional planning permission. Where the condition relates to an occupancy restriction, the appropriate requirement is simply to comply with the condition, leaving the Appellants with a choice as to how to comply.
3. The condition here at issue has three constituent parts. Firstly, it restricts occupancy to "bona fide holidaymakers"; secondly, it restricts periods of occupancy to no more than a total of four weeks in any twelve week period; and thirdly, it requires a register of holidaymakers to be kept. However, the breach of planning control alleged in the notice does not reflect these specific terms of the condition, but rather alleges "The use of the barn *as a permanent dwelling* in breach of condition 03..." [my emphasis].
4. This departure from the precise terms of the condition is problematic, in that it confuses the purpose of the notice. I should say that this observation does not impute any strong criticism of the Council; I appreciate that as a logical necessity, "use as a permanent dwelling" would constitute a breach of Condition 03. The problem that concerns me relates to the implications that the Council's choice of wording had for a potential appeal against the enforcement notice on ground (a). This ground of appeal is that planning permission should be granted for what is alleged in the notice.
5. The Appellants have consistently maintained that they have not used, and have no wish to use, the appeal site as a permanent dwelling. Rather, their intention was to seek the replacement of the existing holiday occupancy condition with a more modern alternative which, while still preventing use as a permanent dwelling, would not place time limits on individual periods of occupation but simply require that the building be used for holiday purposes only.
6. That being the case, the Appellants could not reasonably have perceived a need to lodge an appeal on ground (a) against a notice alleging "The use of the barn as a permanent dwelling", since they did not wish to seek planning permission for that use. Whereas had the breach alleged by the notice been correctly worded – that is, reflective of the precise restrictions on occupancy imposed by Condition 03 – the Appellants may well have realised the necessity of submitting a ground (a) appeal in order to pursue their desired variation of its terms. In the current absence of an appeal on ground (a), it is not open to me to consider the planning merits of varying Condition 03.
7. I do have wide powers, under s.176 of the 1990 Act, to correct or vary the terms of the enforcement notice, provided I can be satisfied that doing so would not cause injustice to the Appellants or the local planning authority. I have given careful consideration to whether I could exercise those powers in this case. However, as discussed above, I consider that had the allegation been correctly worded in the first place the Appellants may well have pursued their option to appeal against the notice on ground (a). The deadline for paying the fee for the deemed planning application made on an appeal on ground (a) is now long past, so if I were to amend the wording of the alleged breach at this late stage, the Appellants would effectively



have been deprived of their only opportunity to lodge an appeal on ground (a). That would clearly be unjust.

## **Conclusion**

8. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under s.176(1)(a) of the 1990 Act since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the various grounds of appeal as set out in s.174(2) of the 1990 Act do not fall to be considered.

*Jessica Graham*

INSPECTOR

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