



Appeal Decision

Site visit made on 3 January 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/Q3305/C/16/3151925

Higher Farm, Old Frome Road, East Horrington, Wells, Somerset BA5 3DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J Dimery-Seek against an enforcement notice issued by Mendip District Council.
- The notice was issued on 13 May 2016.
- The breach of planning control as alleged in the notice is without planning permission the erection of a detached dwelling and the erection of a separate building comprising two independent dwellings.
- The requirements of the notice are: (i) cease residential occupation and use of the buildings and land; (ii) completely demolish both buildings, marked A and B on the plan [attached to the notice]; (iii) permanently disconnect and remove all services to all dwellings i.e. electricity supply, gas supply, foul drainage and water supply including all services underground i.e. earth Source Heating; (iv) remove all resultant materials from the land resulting from (ii) and (iii) above; (v) restore the land to its original condition as agricultural land.
- The period for compliance with these requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (f) of the Act [but see also procedural matters, below].

Formal Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the phrase "A(1)" in the title under the words "TOWN AND COUNTRY PLANNING ACT 1990" on the first page of the notice; and,
 - the deletion of the phrase "Planning and Compulsory Purchase Act 2004" on the first page of the notice and its replacement with the phrase "Planning and Compensation Act 1991".
2. It is directed that the enforcement notice is varied by:
 - the deletion of the phrase "and the erection of a separate building comprising two independent dwellings" in paragraph 3 of the notice and its replacement with the phrase "marked A on the attached plan";
 - the deletion of the phrase "buildings and land" in paragraph 5 (i) of the notice and its replacement with the phrase "dwelling marked A on the attached plan";
 - the deletion of the phrase "Completely demolish both buildings, marked A and B on the attached plan" in paragraph 5 (ii) of the notice and its replacement with the phrase "Completely demolish the building marked A on the attached plan";
 - the deletion of the phrase "Permanently disconnect and remove all services to all dwellings i.e. electricity supply, gas supply, foul drainage

and water supply including all services underground i.e. earth Source Heating” in paragraph 5 (iii) of the notice and its replacement with the phrase “Permanently disconnect and remove the ground source heat pump, and disconnect the electricity supply, gas supply, water supply and connection with the septic tank that serve the dwelling marked A on the attached plan”; and,

- the substitution of the plan attached to this decision for the plan attached to the enforcement notice.
3. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural matters

4. The Planning Inspectorate [PINS] wrote to both main parties on 23 December 2016 to canvass views on 3 possible revisions to the notice, which I examine below, and I have taken account of the responses that have been received.
5. The first point is that the face of the notice refers to “Section 172A(1)” of the Act, which is incorrect and should be section 172. I have considered whether there would be any injustice if I were to correct what appears to be an error. The Appellant’s Agent’s email dated 30 December 2016 confirms that no argument is raised in respect of the legal validity of the notice. In that context, my view that the Appellant would not suffer injustice if I were to exercise the power in section 176 of the Act is confirmed by the fact that the example notice¹ in the Planning Practice Guidance [“the Guidance”] does not quote any section in its title. The notice is otherwise plain on its face as to what it is and since it is not essential to even quote the section it is not fundamental.
6. The second point is that the model notice in the Guidance says: “*As amended by the Planning and Compensation Act 1991*” [“the 1991 Act”], rather than the Planning and Compulsory Purchase Act 2004 [“the 2004 Act”]. The Council is not wrong insofar as the 2004 Act has amended the Act in certain respects, but the 1991 Act introduced, amongst other things, section 171A(1), which is expressly referred to in paragraph 1 of the enforcement notice. I suggest this is why the model notice refers to the 1991 Act and not the 2004 Act. This defect, rather than error, is again capable of correction without injustice, as the Appellant’s Agent’s email dated 30 December 2016 has confirmed.
7. The third point is that paragraph 6.32 of the Council’s statement accepts that: “...*Building B was substantially complete by May 2011*”. On that basis, paragraph 6.45 of the Council’s statement invites me to: “...*amend the Requirements of the Notice so that Section (ii) reads 'Completely demolish the building marked A on the attached plan'*”. However because the Council do not otherwise seek a revision to the allegation the effect of doing so would be that section 173(11) of the Act would grant a deemed planning permission for Building B. Allied to that, the use of Building B would simply not fall to be considered in that scenario because the allegation is one of “erection”.
8. Accordingly PINS email to the parties suggested it would be appropriate to strike through the words: “*and the erection of a separate building comprising*

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/548727/17b-061-20140120_example-enforcement-notice-operational-development.pdf

two independent dwellings", in paragraph 3 of the notice. The effect of this is that the varied allegation would read: "*without planning permission the erection of a detached dwelling*", so that the focus of the notice subject of this appeal would be exclusively Building A. The Appellant does not seek a deemed planning permission for Building B [Statement of Case, paragraph 4.2] and so would not suffer injustice from this course of action. This was confirmed in the Appellant's Agent's email dated 30 December 2016.

9. The consequences that flow from the above variation include that the ground (d) appeal falls away. That has solely been advanced in relation to Building B. To verify that fact I note that the Appellant's letter dated 6 June 2016 admits that the: "*...new main dwelling was constructed and completed by December 2013*", which is plainly within 4-years of the date of issue of the notice the subject of this appeal. There would also need to be a number of consequential variations to the requirements which, in any event, might need to be reviewed as part of the ground (f) appeal should it fall to be considered.
10. Concerns have been expressed in the Appellant's Agent's email dated 30 December 2016 that PINS email dated 23 December 2016 is prejudicial in 2 respects that I deal with here. The first point relates to whether the Council, by issue of the notice subject of this appeal, has purported to take enforcement action in respect of the use of Building B. I acknowledge that the allegation is one of erection, but if the notice had been upheld without correction the requirements would have necessitated the demolition of the building and the cessation of the use thereof. The use would not have survived or otherwise become lawful except in the scenario of success on one of the grounds of appeal. For these reasons it is clear that the Council has purported to take enforcement action in respect of that breach, because the notice subject of this appeal required, amongst other things, the cessation of the use of Building B.
11. However, in relation to the second point, I make clear that PINS email dated 23 December 2016 was not seeking to make any ruling as to the applicability or otherwise of the 10-year rule. To the extent that PINS email could be read that way I apologise and emphasise that was not my intention. What I was trying to do was reflect what the Council was saying it wanted me to do with the notice that is the subject of this appeal. The email sought to make the point that even if I were to correct the allegation there was likely to be injustice because the Appellant would have needed to show 10 rather than 4-years use. This is a key reason that led me to suggest the course of action now agreed.
12. Finally, at the site visit, agreement was reached with regard to a number of measurements which, insofar as it is necessary to do so, are recorded under the ground (c) head below. In addition to seeking confirmation from the parties of the measurements taken, PINS email of 4 January 2017 sought comments on the Appellant's suggestion that a condition could be imposed on the ground (a) appeal to require Building B to be used as a garage. I would record that the Council's email dated 12 January 2017 objected to that approach. I shall consider this matter further, as appropriate, when dealing with ground (a).

Ground (c)

13. Under this ground of appeal the Appellant needs to show that: "*...there has not been a breach of planning control*" [as per section E. (c) of the appeal form]. The Council issued a Lawful Development Certificate [LDC] for the: "*use of*

building as self contained dwelling" under its reference 2009/1943 in a decision dated 3 February 2010. Subsequently the Council granted planning permission for the: *"Erection of replacement dwelling"* under its reference 2010/1200 in a decision dated 11 October 2010. It is common ground that the building that was the subject of the LDC has been demolished. In the circumstances the LDC does not represent a legitimate fallback position. The key issue to be considered is therefore whether the planning permission was implemented.

14. The planning permission is subject to 5 conditions. The Appellant's assertion that details required by conditions 2 and 3 were submitted and subsequently agreed by the Council has not been disputed. Whilst it is unclear whether the works were carried out in accordance with the approved details, this is not a point that the Council has raised as to why it considers there has been a breach of planning control. In the circumstances I intend to proceed on the basis that this is a neutral point; in the absence of evidence one way or the other this is not a reason to find that the planning permission has not been lawfully implemented. Condition 5 required the existing dwelling and its constituent elements to be removed from the site before *"first occupation"* of the new dwelling. It is not a pre-commencement condition and so the fact that the existing dwelling has been removed is not indicative of implementation.
15. Prior to October 2010, being the date of the planning permission, advice had been issued to say that a condition should be imposed to identify the approved plans, but no such condition was imposed in this case. Instead the first of the 5 *"Notes"* say: *"This decision relates to Drawing Numbers 1, 2, 3, 4, 5, 6, 7, 8a received on 8 June 2010 only"*. Although the parties have not referred to relevant case law on the point because this is a full planning permission it is clear that the public, reading that decision notice, would realise that it was incomplete, indeed useless, without the approved drawings. Accordingly it is clear that the approved drawings have been incorporated into the permission.
16. The Appellant exhibits drawing No 8, but it is clear from the above list that it is not an approved drawing. The relevant approved drawing, No 8a, is annotated to say: *"Proposed Dwelling FFL 179.00"*. This appears to represent a slight cut into the slope on the basis that whilst the south-west corner of the footprint is shown to stand on the 179 m contour, the majority of the footprint of the proposed dwelling overlaps the dotted footprint of the existing dwelling. An annotation on the drawing says: *"Existing Dwelling FFL 179.50"*. On this basis it would appear that the proposed dwelling should have had a finished floor level that was 0.5 m below that of the existing dwelling. The proposed FFL is shown to be 3.0 m above the existing FFL of the agricultural buildings.
17. Approved drawing No 5 shows that the permitted dwelling comprises 2 floors of accommodation including 4 bedrooms and 2 bathrooms [one en-suite]. There is also a downstairs office. Approved drawing No 6, read with drawing No 8a, shows a conventional house with a front entrance porch facing east and a two storey projection from the northern gable, the ridge of which is lower than the ridge of the main house. The Council's measurements are that the approved footprint is 9.4 m x 10.7 m with a 4.6 m x 6 m projection, a ridge height of 8.7 m [house] and an eaves height of 5 m [house and projection]. It is now agreed that these measurements, taken from the approved plans, are correct.
18. The plans that record what has been built are dated "Jan 12" and merely show the external elevations. Whilst purporting to be at a scale of 1:100, I am

satisfied that the plans are not at that scale, at least not in the form that they have been provided, i.e. as shown on an A4 sheet. My inspection confirmed that in broad terms they reflect what has been built. Amongst other things, despite valiant efforts, it was unclear from my inspection whether the FFL is at 179 m AOD and it was therefore agreed that the ground floor FFL was not materially different from what was approved. Taking account of these plans and the measurements that have been agreed on site, I have identified the following differences between what has been built and what was approved:

- i. The dwelling that has been built has 4 floors of accommodation rather than the 2 floors that were approved, albeit that the ground floor is a basement and the second floor is within the roof space;
- ii. The house has been rotated by approximately 90° to what was approved so that the ridge runs broadly east-west, rather than north-south;
- iii. The siting of the dwelling has been pushed back so that the front of the dwelling is roughly 2 m behind [west] and the rear of the dwelling is approximately 3 m behind [west] of that shown on approved plan No 8A;
- iv. The difference in iii. above arises partly from the fact that the footprint of the dwelling as built is approximately 11 m x 10.7 m, which appears to be approximately 1.6 m deeper than what was approved. However there is no projection set back from the northern elevation of the house;
- v. The Council's laser indicated that the ridge height of the dwelling was 8.98 m above DPC level which, in turn, was 0.17 m below the FFL of the ground floor of the dwelling. Comparison to the measurement taken from the approved plans is not straight forward because the elevations do not show the finished floor level. However to the extent that the approved elevations show the sill of ground floor entrances, e.g. to patio doors etc, standing clear of the ground level, I consider that it is not necessary to make an adjustment for the finished floor level. In other words the most appropriate comparison is between the 8.7 m ridge height taken from the approved plans and the 8.98 m laser measurement. On this basis the dwelling appears to be 0.28 m higher than what has been approved, without taking account of the basement level². The Council's laser indicated that the ridge height of the dwelling was between 11.26 and 11.3 m above ground level just in front of the basement area. Although this does not facilitate comparison to any permitted measurement, it does emphasise the vertical form of particularly the rear [west] elevation, when compared to the horizontal form of the approved west elevation;
- vi. The Council's laser indicated that the eaves height of the dwelling was between 5.40 and 5.45 m above DPC level and between 6.29 and 6.4 m above the top of the exposed concrete blocks which, in its south-east corner, equated to ground level but in other areas was above ground level. Again I consider the appropriate comparison would be to DPC level which, in this instance, works to the Appellant's benefit. The eaves height is therefore a minimum of 0.4 m higher than what was approved;
- vii. It is agreed that the ground floor and first floor layouts of the dwelling broadly accord with approved drawing No 5, except there is no projection

² It is material to note that this estimate is in fact less than the increase of 0.65 m that is referred to in paragraph 4.3 of the Appellant's statement. However, in the absence of an accurate 'as built' survey, the basis for the figure in the Appellant's statement is unclear. Ultimately my conclusion as to the magnitude of the increase in the ridge height appears to be to the Appellant's advantage.

- [office/bed 2]. However there is also a lower ground floor, comprising plant room, and a second floor, comprising 4 rooms, including an office, w.c. and store area [with 2 velux windows facing north]; and,
- viii. When comparison is made between the approved and existing elevations, the number of openings appears to have increased from 20 to 24, or 27 if one includes the velux windows that are not shown on the 'as built' plans and the additional window at second floor level on the east elevation³. The 'porch' feature has been constructed larger than what was approved and this disrupts the symmetry that is shown on the east elevation of the approved plans. The recess of the side projection and its lower ridge height ensured that it was not overpowering and of an appropriate mass. In a similar vein the rear [west] elevation is now a complete mismatch of different sized openings that strongly contrasts with the clean horizontal lines of the approved windows and the matching narrow form of doors.
19. The Council says that it is clear that the dwelling as built is not in accordance with the approved plans; I agree. However it does not express a view on whether the planning permission has been implemented and there has been a departure from the approved plans or whether what has been built is "*entirely separate from*" the planning permission⁴. The Appellant's ground (c)⁵ is in fact a ground (d) argument, but I have reviewed the remainder of the statement to try to understand the basis on which the ground (c) is advanced. Paragraph 2.7 of the Appellant's statement says: "*Works were commenced shortly after submission pursuant to the grant of permission, however the Buildings Regulation's Final Certificate...confirms that the description of development as a whole changed...*". Based on the limited information before me the claim might be that Building B was built first and implemented the planning permission⁶.
20. The Council's unchallenged measurements are that Building B is 10.65 m away from the dwelling, rather than the 2 m separation approved. Although I appreciate that some of this difference can be explained by the absence of the [northern] projection, since it had a footprint of 4.6 m x 6 m that is not a complete explanation for the difference. In addition to what appears to be a materially different siting, the elevations of Building B appear to be materially different from what was approved⁷ and it appears to have been used from the outset as a dwelling rather than a garage⁸. The Appellant also admits that the ridge height has been raised⁹. For these reasons, if the claim is that the permission was implemented by construction of Building B, I reject it because, as a matter of fact and degree, that building appears to have been built on a different site and to a different specification to what was permitted. My view in this matter is confirmed by the fact that the building is now agreed to be lawful

³ Compare Jan 12 'as built' plan with the Council's first photograph at Appendix B to the Council's statement.

⁴ Words in quotes are taken from paragraph 6.27 of the Council's statement.

⁵ As set out in paragraph 1.2 of the Appellant's statement and in the sequence starting at paragraph 4.8.

⁶ The statement acknowledges that Building B was occupied by the Appellant: "...while the main house was constructed". The Appellant's letter dated 6 June 2016 confirms this sequence.

⁷ Compare approved drawing No 7 with the Council's second photograph at Appendix B to the Council's statement and note, amongst other things, different arrangement of openings on south elevation, additional opening at first floor on east elevation and addition of velux windows in roof. The Appellant's photographs dated 2 May 2011 also show that there is a dormer in the northern elevation, which contrasts with approved drawing No 7.

⁸ The Appellant's letter dated 6 June 2016 confirms that Building B was finished in May/June 2011 and: "...had been adapted to replace the approved garage doors with patio doors. The Appellant confirms he: "...needed somewhere to live and had therefore fitted the building out for such initial replacement residential use" [my emphasis].

⁹ Paragraph 4.3 of the Appellant's statement.

- by virtue of having been substantially completed more than 4 years ago, rather than because it benefits from the grant of planning permission.
21. Paragraph 2.9 of the Appellant's statement dismisses the works to the main dwelling as being: "*...some design changes...*", and suggests the reorientation of the dwelling was to take advantage of the southerly aspect to enable solar panels to be added in the future. This reinforces the impression that there was a deliberate and conscious decision to build something materially different from that which was approved prior to the commencement of the works. It has not been shown these decisions were made after the commencement of the works.
22. Significantly, paragraph 5.2 of the Appellant's statement says: "*The appellant does not dispute that they carried out works in deviation of their planning approval...*". However that is precisely the basis on which the ground (c) is lodged, i.e. in pursuit of a claim that there has not been a breach of planning control. Taking the Appellant's case in the round, including taking account of the final comments, my strong impression is that the tick in the ground (c) box on the appeal form was in fact a mistake and that it was intended just to lodge a ground (d). That was picked up by PINS in its letter dated 30 June 2016, which admitted that additional ground of appeal. In the email to PINS dated 30 June 2016 it was said for the Appellant: "*On reflection I would therefore be grateful if the case presented under ground c could in fact be assessed by the Inspector on the basis that [Building B] ... is immune from enforcement action*". Effectively ground (d) replaced (c), but formally ground (c) was not withdrawn.
23. In the circumstances there can be no question that there has been a very clear breach of planning control. Moreover the Appellant has not shown that the planning permission has been implemented. The: "*...new detached dwelling & detached garage/workshop with 2 no bed flat above*", which was certified by the "*final certificate*" under the Building Regulations, appears to have been significantly and materially different from the 2-storey detached dwelling that was permitted by the planning permission. The large number of differences, including in terms of siting, ridge height, eaves height, orientation, extent of habitable accommodation and size and number of openings are such that, as a matter of fact and degree, it cannot be considered to have implemented the planning permission. For these reasons, the ground (c) appeal must fail.

Ground (a): Preliminary observations

24. The Appellant has lodged the appeal on grounds (a) and (f), and there is some overlap in a case such as this. The Appellant asserts that it is "*irrefutable*" that the appeal development is "*very similar*" to the sanctioned works, but for the reasons set out under the ground (c) head I reject that claim. It has not been shown that the planning permission has been lawfully implemented and so it does not represent a legitimate fallback position because the permission has now lapsed¹⁰. I have also explained why, with the demolition of the building that was the subject of the LDC, that too is not a valid fallback position.
25. In the event that ground (a) fails I shall deal, as necessary, with ground (f). Section 173(3) of the Act says that an enforcement notice shall specify steps in order to achieve, wholly or partly, the purposes set out in Section 173(4)(a) of the Act. These include remedying the breach by making any development

¹⁰ The planning permission was subject to a condition that it had to be begun within 3 years of the date of the grant of planning permission, namely by 11 October 2013.

- comply with the terms, including conditions, of any planning permission that has been granted in respect of the land [my emphasis].
26. In my view it would not be possible to achieve such an outcome under a ground (f). I have therefore approached the deemed application holistically, taking account of the arguments raised under ground (f). This is line with section 177(1)(a) of the Act, which says that planning permission could be granted: "*in relation to the whole or any part*", of the matters alleged in the enforcement notice. As such, I have considered at the outset whether it might be possible to grant planning permission in this way for the 2010 scheme, without prejudice to the Appellant's main arguments considered below.
27. However the differences between the 2010 planning permission and the scheme that is the subject of the deemed application are in my view so significant that it cannot be regarded to be "*part*" of the development as built. In other words, the scale of the changes that would be required to modify what has been built into what was granted planning permission would require the complete demolition of the existing dwelling and the construction of a replacement dwelling on a materially different site. Factors that lead me to that conclusion are listed at paragraph 18 above and include the materially different siting, the existence of the lower ground floor level and the significant change in orientation. This finding is supported by the Council's view that: "*The differences between the as-built buildings and those approved are too significant to be able to take any lesser steps to overcome the harm*"¹¹.
28. For these reasons the 2010 scheme is not an obvious alternative that would overcome the planning difficulties. Moreover there has been a material change in the planning considerations that led the Council to approve the 2010 scheme, insofar as there is no longer a lawful dwelling on the land¹². Any variation to the terms of the notice, as would be required in order to deliver such an outcome, would therefore be likely to cause injustice to the Council, applying section 176(1)(b) of the Act. For these reasons, having considered the possibility, this is not an obvious alternative that I shall examine further.
29. Finally, as a preliminary observation, it is material that Building B, which is now agreed to be a lawful structure, was used by the Appellant as the family's main home prior to the construction of Building A. In principle, this means that there is an existing dwelling that is available to the Appellant elsewhere on the site. This is consistent with the Appellant's approach in his statement¹³.

Main issues

30. I consider that there are 3 main issues. The first is whether this is a suitable location for a new open market dwelling. The second is the effect of the development on the character and appearance of the area. The third is whether there are material considerations that indicate that the determination should be made otherwise than in accordance with the Development Plan [DP].

Reasons: (i) Location

31. The DP includes the Mendip District Local Plan Part 1 [LP], which was adopted in December 2014. Core Policy [CP] 1 seeks to enable the most sustainable

¹¹ Source of quote: paragraph 6.52 of the Council's statement.

¹² See reasons for approval, as stated on the face of the planning permission dated 11 October 2010.

¹³ See in particular the second sentence of paragraph 4.14 of the Appellant's statement.

pattern of growth for Mendip district by focussing development into the main towns and villages. East Horrington is not identified as a village in the policy. As such 1 b. iii. says: *In other villages and hamlets, development may be permitted in line with provisions set out in Core Policy 4 to meet specifically identified local needs within those communities.* Noting that the appeal site is outside of the village 1 c. also says: *Development in the open countryside will be strictly controlled but may exceptionally be permitted in line with the provisions set out in Core Policy 4: Sustaining Rural Communities.*

32. CP 4 seeks to sustain rural communities by permitting, amongst other things, rural affordable housing and: *occupational dwellings in rural locations, where there is a proven and essential functional need, to support agricultural, forestry and other rural-based enterprises.* Notwithstanding the fact that this appears to be an agricultural land holding, no case has been advanced to demonstrate that there is an essential functional need to support agriculture on this farm.
33. CP 2 sets out how many houses will be delivered over the plan period and their distribution. It appears to be common ground that the appeal site is not within the Development Limits defined on the LP Policies Map and no case has been made that this site, whilst outside of those Development Limits, is likely to be allocated through the Site Allocations process. No case has been made that the Council cannot demonstrate a 5-year supply of deliverable housing sites and so these relevant policies for the supply of housing are up-to-date.
34. On the first main issue I conclude that this is an unsuitable location for a new open market dwelling. As such I find a conflict with the LP Policies CP1 and CP2, which are the only ones relevant to this issue cited on the notice.

(ii) Character and appearance

35. The appeal site lies in a sweeping pastoral landscape above the village of East Horrington. Particularly on approach from the east along Old Frome Road the dwelling is a conspicuous built feature in the attractive bowl-shaped landform. Whereas the existing agricultural barns are set down in the landscape below grassed banks, which might have been purpose designed to screen them, the dwelling is visible above the skyline when seen from a fair distance along the highway. Indeed my inspection revealed that even the southern eaves of the dwelling breaks the skyline in some of the public views from Old Frome Road. The existing roadside hedgerow with occasional intermittent trees fails to provide an effective screen to the dwelling, particularly from the north-east.
36. The west elevation of the dwelling is also highly visible in views from Veal Lane, to the north-west of East Horrington. When seen from this public vantage-point the dwelling is again highly visible even at a distance of at least ½ a kilometre. There is a clear view of what is in effect a 4-storey elevation across the open fields that characterise the intervening countryside to the east of Veal Lane as, at a number of vantage-points along the lane, there is no hedgerow. In this context I reject the claim that the site, including this building, is not publicly visible other than in glimpsed views from the distant road network. It might well be visible from a number of other public vantage-points, such as Bristol Hill, which is referred to in paragraph 6.21 of the Council's statement.
37. Given the extent of the deemed application site boundary, I consider that no planting could adequately screen or filter these views and hence it would not be possible to address the identified harm by imposing a landscape condition.

Although I have had regard to the suggested conditions that have been put forward on a without prejudice by the Council, I am not satisfied that any other conditions could address the serious landscape harm that I have identified.

38. In the circumstances I find a clear conflict with LP Policy DP4, which does not support any proposal for development that would, individually or cumulatively, significantly degrade the quality of the local landscape. The Appellant has not demonstrated that the development's siting and design is compatible with the pattern of natural and man-made features of the Landscape Character Area.
39. On the second main issue I conclude that the development has harmed the character and appearance of the area, contrary to LP Policy DP4.

(iii) Other material considerations

40. To be fair to the Appellant I have identified this as a broad catch-all in order to properly take account of the arguments that have been put forward. Given the slight overlap in terms of the grounds of appeal I have reviewed the Appellant's statement to take account of all material considerations under ground (a).
41. For the reasons already identified I attach very limited weight to the lapsed planning permission and the LDC, which do not represent appropriate fallbacks. The deemed application is not therefore for a replacement dwelling. Whilst I accept that the footprint might be slightly smaller than that permitted in 2010 this gives rise to a clear distinction with the circumstances that prevailed when the Council granted planning permission in 2010. I accept that the dwelling has incorporated, amongst other things, a ground source heat pump, but that does not outweigh the concerns identified, for example in the first main issue.
42. The offer to accept a planning condition to require Building B to be converted to a garage does not address the harm and policy conflict that I have identified in respect of Building A. The claim that demolition would be a profligate use of resources and hence contrary to paragraph 17 of the Framework has not been made out. Moreover there is no reason why most of the materials that have been used in the construction of the dwelling could not be sold and/or re-used.
43. There seems to be a suggestion that the site has an: "*established residential use*"¹⁴, but such a claim is not made out. The original temporary mobile home was subsumed within the structure that was the subject of the LDC, but with its demise any subsequent residential use has been dependent upon the structure that has facilitated it. I have seen no evidence that any residential use is now lawful, although that is without prejudice to any claim that might be made with regard to Building B. Whilst there is no reason to doubt that the land [edged red on the plan attached to the notice] has been used for residential purposes for more than 10-years that does not make it immune to enforcement. The residential use has been contingent on the buildings that have facilitated it and cannot survive if those buildings are demolished. In the circumstances I accept the notice might, depending on the view taken in relation to Building B, mean that the Appellant might need to travel to the holding to attend to the farm, but I have no information with regard to the size or nature of the agricultural enterprise. This is reflected in the approach taken on the second main issue.

¹⁴ Paragraph 4.15 of the Appellant's statement and the first point of the final comments, from which the quote is taken.

44. The Appellant has referred to LP Policies DP7, DP9 and DP10, which relate to design and amenity of new development, transport impact of new development and parking standards, respectively. Firstly I reject any inference that the development is a high quality design. Paragraph 58 of the Framework says that planning decisions should aim to ensure that development, amongst other things, responds to local character and reflects the identity of its surroundings. Paragraph 60 says it is proper to reinforce local distinctiveness and paragraph 61 says decisions should address the integration of new development into the natural environment. However I have given reasons in my consideration of the second issue why this development fails, amongst other things, to satisfactorily integrate into its environs. Its scale, mass and form are not appropriate to the local context. So, whilst I appreciate that the Council has not alleged a conflict with LP Policy DP7, neither do I find clear compliance with its terms and so it cannot be prayed in aid of the development that has been undertaken.
45. Similarly the Council has not alleged a conflict with LP Policy DP9, but it has said¹⁵ that the occupiers would be heavily reliant on the use of the private car in this location. The Council's unchallenged claim is that the nearest bus stop is some distance away and only accessible via a narrow country lane without lighting or pavements. No details of frequency of bus service have been given. LP Policy DP9 says development must demonstrate how they will maximise the use of sustainable forms of transport, but there has been no attempt to do so. Again, whilst I acknowledge that the Council has not alleged a conflict with LP Policy DP7, neither do I find compliance with its terms. Although there is no doubt that the amount of parking provision is adequate, the problem appears to be that it is potentially too high and in that sense might be inappropriate. For this reason LP Policy DP10 cannot be prayed in aid of the scheme either.
46. On the third main issue I conclude that there are no material considerations that, individually or cumulatively, indicate that the determination should be made otherwise than in accordance with the DP as a whole. Conditions could not address the harm and, amongst other things, it is not possible to vary the notice in order to deliver the 2010 planning permission because it is materially different from, and hence does not form part of, the development undertaken.

Overall conclusion on the deemed application

47. For the reasons given above and having regard to all other matters raised in the representations I conclude overall that the ground (a) appeal, the deemed planning application, should fail.

Ground (f)

48. Under this head I initially follow through the consequences of the variation that I intend to make to the allegation. Firstly requirement (i) would be excessive in that context and should be pared back to the cessation of the use of Building A. That is without prejudice to any future arguments in respect of Building B. It should not be taken as condoning the residential use of the land edged red, but I am conscious that such use might be ancillary to Building B. Whilst I have considered the potential for under-enforcement, I am satisfied section 173(11) would not sanction the residential use of the land for this reason. The Council has already offered a revised form of words with regard to the second requirement, which reflects the variation I intend to make to the allegation.

¹⁵ Paragraph 6.4 of the Council's statement.

49. Turning to the third requirement, this requires variation in order to reflect the fact that some of the services pre-exist the construction of the dwelling. The septic tank appears to have been installed by March 1998, as evidenced by the date of the correspondence from the Environment Agency¹⁶. The electricity supply also appears to have been pre-existing, which is shown by the date of correspondence from "SWEB"¹⁷. Nevertheless it would still be appropriate to terminate the connections from Building A to the septic tank and the electricity supply; the latter is clearly necessary prior to demolition in any event in the interests of personal safety. However, for the avoidance of doubt, I am not suggesting that the requirement should go beyond making the connection safe.
50. Despite the assertion in paragraph 4.15 of the Appellant's statement that "all" services have been present since the late 1990s, no evidence has been offered in relation to gas, water or the ground source heat pump. In respect of the latter, since it occupies the lower ground floor of Building A, it stands to reason that it is contemporary with the dwelling. In the absence of evidence the gas supply should also be cut off insofar as it serves Building A. Whilst, as a matter of logic, there must have been a pre-existing water supply, it would still be appropriate to terminate the connection to Building A, whilst allowing this and any other services to still serve Building B in the immediate future. These variations would reflect the Appellant's arguments and not cause injustice.
51. Beyond these necessary changes the requirements of the notice are not excessive. It is clear from the requirements in the round that the Council's objective in issuing the notice was to remedy the breach of planning control. This wording relates back to section 173(4)(a) of the Act, namely remedying the breach by discontinuing the use and restoring the land to its condition before the breach took place. In this instance that would appear to have been land without the pre-existing building, which would have needed to have been demolished in its entirety before any works began to erect the building subject of the varied notice. That view is borne out by the terms of the Appellant's letter dated 6 June 2016, which confirms it was demolished in April 2012 when he moved into Building B and viewed it as an annex: "*...to the replacement house then being commenced*" [*my emphasis*]. For reasons that I have examined under ground (a), there are no obvious alternative lesser steps.
52. In the circumstances I conclude that no reason is advanced as to why the requirements of the notice, as proposed to be varied, exceed what is necessary to remedy the breach which, for the reasons explained, is the limited scope of the ground (f) appeal in this case. As such, this ground of appeal also fails.

Conclusion

53. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the corrected and varied enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR

¹⁶ Appendix 1 to the Appellant's statement.

¹⁷ Appendix 2 to the Appellant's statement.

Plan

This is the plan referred to in my decision dated: 20 January 2017

by Pete Drew BSc (Hons), Dip TP (Dist) MRTPI

Higher Farm, Old Frome Road, East Horrington, Wells, Somerset BA5 3DR

Appeal Ref: APP/Q3305/C/16/3151925

Scale: Do not scale as original plan has been transferred which might cause variations.



Reference: ENF/2016/0029

Location: Higher Farm Old Frome Road East Horrington Wells Somerset
BA5 3DR

