
Appeal Decision

Hearing Held on 8 May 2019

Site visit made on 8 May 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 May 2019

Appeal Ref: APP/Q3305/W/18/3200788

Goodrest Cottage, Neighbourne Lane, Oakhill, Somerset BA3 5BQ

- 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 Stephen Powell against the decision of Mendip District Council.
 - The application Ref 2016/0112/FUL, dated 14 January 2016, was refused by notice dated 24 October 2017.
 - The development proposed is new house.
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Decision

1. I dismiss the appeal.

Procedural Matter

2. The National Planning Policy Framework current at the time of the application and the Council's Decision was that of 2012. By the time of the Hearing this had been revised as the 2019 publication with changes to the wording and requirements relevant to the consideration of this appeal.

Preliminary Findings

3. The proposal is for a dwelling outside of any Development Plan settlement boundary and it was promoted specifically as meeting the requirements of the fourth bullet point to paragraph 55 of the 2012 National Planning Policy Framework. That is now paragraph 79e) of the 2019 revision, being one of the circumstances that could allow an exception to the statement in the main body of the paragraph that planning policies and decisions should avoid the development of isolated homes in the countryside.
4. The meaning of the word 'isolated' was the subject of the 'Braintree' judgments¹ and should be given its ordinary objective meaning of '*far away from other places, buildings or people; remote*'. The Appeal Court Judge stated that whether a proposed new dwelling is, or is not, 'isolated' in this sense will be a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
5. This matter was raised with the parties prior to the Hearing, and the appellant accepted that due to the presence of a number of dwellings in the immediate

¹ Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018

vicinity of the proposed dwelling that might constitute a hamlet, it would be difficult to present a credible argument such that the proposed dwelling could be identified as 'isolated' for the purposes of paragraph 79 of the Framework.

6. With the benefit of an unaccompanied visit to the area on the day before the Hearing, I announced my view in opening that the location should not be considered 'isolated' in the terms of the Framework, and that view did not change as a result of the later accompanied site inspection.
7. Although the proposal does not benefit from the exception set out at paragraph 79e) of the Framework, and the location places the proposal as being contrary to the Development Plan and national policies of restraint on new dwellings in the countryside, section 38(6) of the Planning and Compulsory Purchase Act 2004, provides for material considerations to indicate a decision otherwise than in accordance with the Development Plan, and the Hearing proceeded on that basis, as will this Decision.

Main Issues

8. Having regard to the Preliminary Findings above, the main issues are;
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on the living conditions of nearby residential occupiers with particular regard to privacy.
 - The weight to be attached to other considerations in favour of the proposals.

Reasons

Policy

9. Core Policy 1 of the Mendip District Local Plan 2006-2029, adopted in 2014 states that all new development is expected to contribute positively towards delivering components of the Vision for the District and the associated strategic objectives. The policy sets out how the most sustainable pattern of growth will be accommodated according to the five principal settlements, primary villages, secondary villages, and other villages and hamlets. Development in the open countryside will be strictly controlled but may be exceptionally permitted in line with the provisions of Core Policy 4 on sustaining rural communities. Core Policy 2 is entitled 'supporting the provision of housing' and sets out the locations for a minimum of 9,635 additional dwellings.
10. Development Policy 1 requires all development proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness across the District, and in section 2 and 3 sets out more detailed requirements. Mendip's landscape is the subject of Development Policy 4 and proposals for development that would, individually or cumulatively, significantly degrade the quality of the local landscape will not be supported. Development Policy 7 concerns the design and amenity of new development with criteria to support high quality design which results in usable, durable, adaptable, sustainable and attractive places.
11. As a result of the Preliminary Findings, the exception and criteria in paragraph 79e) of the Framework do not apply, although paragraph 131 on achieving well-designed places contains elements of those criteria, stating that when

determining applications, great weight should be given to outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.

12. More generally, paragraph 124 states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 170 states that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan); and recognising the intrinsic character and beauty of the countryside.

Character and Appearance

13. The appeal site as denoted by the red line is quite tightly drawn around the location of the proposed dwelling and there is blue-edged land beyond that to the boundaries with other properties and the road. The site slopes markedly from east to west, that is to say from the road to the boundary with other properties, but within that slope there are variations and a plateau is evident to the north corner. A public footpath crosses the site, and whilst the definitive line may differ from that habitually in use, neither is directly affected by the proposal. There are various dwellings along the east side of the road and on each side further south, together with a cluster of dwellings at the bend at the foot of the hill. It is the presence of these dwellings that have led to the conclusion regarding a lack of isolation.
14. The land has been described as 'unused' and comments indicated that there is a more overgrown character to it than previously. It appears likely that the nearby dwellings have been developed on the parts of the roadside that are more readily conducive to traditional design and building, leaving the undeveloped land of the site between. This response to topography in the layout of built form is an important contributor to the character and appearance of the area. Within that character and appearance, the land appears as a pleasant green wedge at the double bend and change in levels, which contributes to the loosely developed rural nature of this small group of buildings. The sporadic built form along the road, with clusters at the foot of the hill and at the crossroads by the telephone box, results in the rural nature of the larger area being hardly affected by the presence of these buildings.
15. The proposed dwelling would also respond to topography by running along the contours, and being partly buried within the slope, so that the greenery behind the roadside wall would be encouraged to extend over the near-flat roof, as seen from the east. That possible public view could be screened or filtered with additional planting on the blue-edged land, secured by condition. The 2 wings to north and south would thus present only a limited impression of change, evidenced by the lay-lights and a likely change to the nature of planting where on a roof with more limited depth of soil. The access and driveway would be sufficiently away from the building, down-slope and edged by vegetation as to limit the impact on the character and appearance of the upper road.
16. As a result, whilst there would be change to the view from the upper road where it is over the garage or sleeping wings, the longer vista across the valley, such as to Ashwick and its Church, would tend to 'take-the-eye', and

the lack of obvious built form above the apparent ground level would result in no perceptible harm to that view.

17. However, that cannot be said of the situation to the central part of the dwelling, where the living room and kitchen would enjoy a higher ceiling and a greater degree of lighting by way of a raised roof and clerestory windows facing the road. There is some ambiguity over the extent of laylights and/or solar panels in this area, although that could be addressed by condition, but the fact appears to be that some form of intrusion could be present to the otherwise 'green-roof'.
18. The result of this raising of the roof in this area is that even with a complete 'green-roof' a less-natural land form would be evident, with sheer sides to the lower wings and the rearward facing clerestory windows further drawing attention to the presence of the house. This raised section would be less likely to be seen-over or ignored in the long view, rather it would be more likely to intrude into that view, introducing an alien feature of a window at ground level. The more limited depth of ground between this feature and the road, together with the need for retaining structures to hold back the road, would limit the ability to introduce effective screening, or risk that screening itself appearing contrived and unnatural.
19. It is clear that the design has evolved to take full advantage of the topography of the site and the extensive views out from it. Whilst the fenestration to the sleeping wing and the office and garaging would be restrained and limited, the earth being brought up to a relatively high cill level to the sleeping wing in particular, the central area would have floor to ceiling windows across the full width of the room. There was some discussion at the Hearing as to the use of blinds, curtains or the like to restrict the appearance of such a large lit area within views from both the near footpath and the accessible paths further across the valley, but even if a condition could be devised, doubts would remain as to it being reasonable or enforceable.
20. Such an expanse of glazing in this location would, in any event, present a risk of reflection during the day that would appear out of character with an area comprising buildings having a more traditional ratio of solid to void, and more controlled light emittance and reflection as a result. The expanse of glazing proposed would draw attention to the size of the building and its extent along the slope, that size being out of character with the overall form and layout of the surroundings.
21. The visual relationship with Corner Cottage was a matter of particular study at the site inspection, that dwelling to the north-west of the site being set low compared with the adjacent ground levels, with retaining structures to the rear. Whilst the animal pens along the mutual boundary with the blue-edged land rise with the ground level, it is clear that the north-west corner of the proposed sleeping wing would be close to, but at some elevation above, the cottage. There have been some changes in this relationship during the evolution of the design, as shown by the different amendment numbers on drawings, but such as drawing 113/4 shows what appears to be an abrupt drop in land and an extent of flank wall exposed at the north end on the building.
22. This could be a matter for detailed design, although with Building Regulation approval of plans having been obtained, the design has clearly progressed from that originally presented for planning permission. It is possible that the 2-

dimensional drawings are not able to fully show this relationship, given the slope of the land and the curve of the building, but there remains a concern that the building would present an unattractive and overbearing visual relationship with Corner Cottage.

23. There is a footpath running across from the lower part of the road around Corner Cottage and the part running along the top of the site, and this appears to provide part of a wider network of paths. Local residents assert that it is well-used. Be that as it may, the view from that path would be of the exposed faces of the sleeping and service wings, along with the raised living room part, shown at an elevated level and with the lip of the green roof on the skyline. The scale of the building and its proximity to the path would appear intrusive to the rural character and there would be insufficient architectural interest to counteract this unwelcome effect.
24. To conclude only on the effect of the building on the character and appearance of the area, the proposed dwelling fails to respond in an appropriate manner to the built and natural context of the site, contrary to the aims of Development Policy 1, would not be compatible through siting and design with the landscape in the vicinity of the site, contrary to Development Policy 4, and would not be of a scale, mass, form and layout appropriate to the local context, as sought in Development Policy 7. Other requirements of these policies will be considered as part of the benefits of the scheme and the planning balance. The proposal fails to satisfy the requirement in paragraph 131 of the Framework in the effect on the surroundings.

Living Conditions

25. This was not a matter supported by the Council, the Officer's Report identifying 2 immediate neighbours, but concluding that they would not be adversely affected by the siting or scale of the proposal and would not suffer overlooking or overshadowing.
26. There is an appreciable difference in level between the site of the proposed dwelling, its roof being at or near the level of road, and that of the dwellings of Sumach House and Pear Tree Cottage, which are situated adjoining the lower boundary of the blue edged land. Whilst the distance between the proposed dwelling and these properties would be considered acceptable, and the nature of their rooms on the facing elevation appear to be less sensitive to any loss of privacy, the extent of glazing proposed on the west elevation of the proposed dwelling together with the difference in level would risk a perception of overlooking in the minds of those adjoining residents when in their garden or front driveway.
27. The shortcomings in the design and its effect on the surroundings, identified in the first main issue, would also be particularly felt by those residents, leading to a sense of the dwelling appearing to overwhelm the modest scale of those dwellings lower down the slope.
28. Whilst not a reason for refusal, and alone not a reason to dismiss this Appeal, these concerns expressed by the immediate neighbours are clearly strongly felt and moderate weight attaches, further indicating that the proposal does not fit in with the overall form and layout of its surroundings, as sought in paragraph 131 of the Framework.

Other Considerations

29. As stated, the location of the site renders the proposal for residential use contrary to policies of restraint, and the exception in paragraph 79e) of the Framework does not apply. Nevertheless, material considerations can indicate a decision other than in accordance with the Development Plan. The wording of paragraph 131 coincides with significant parts of paragraph 79e) such that the appraisal carried out by the South West Design Review Panel is a useful tool in judging the credentials of the scheme at Appeal;

Truly Outstanding;

30. The Design Review Panel makes clear that the exception test in the Framework is a 'high bar' and that the quality of the architecture is an alternative to being innovative. The design responds to the topography of the site and the requirements of the client in having gallery space, leading to the relatively wide but shallow form, the rationale of having a lower sleeping and service wing either side of the higher living room would provide an interesting internal experience. Whilst the Panel praise the idea of the meadow grass roof, that feature would risk being seen as an unnatural addition to what is an open, if untended area of land. The use of earth-sheltering is not wholly successful and the visible elements do not display truly outstanding architectural design.

Innovative;

31. This is also an alternative in paragraph 131 and the main thrust of the argument concerns the use of stone quarry waste as a mass walling and retaining material. The Panel describe the proposal as 'promising' but there is clearly work to be done to finalise the proposal, although the Building Regulation approval has provided a separate check of structural calculations. The use of the material is feasible, and as an alternative to cement-based products is to be commended. As pointed out by the Panel, the use of a mass rather than reinforced material would likely require greater thicknesses, but the rock substrate on the site lends itself to the proposed use.
32. From the information provided this should be regarded as being innovative, but there is no-site specific reason why it must be used here, rather than on a scheme within a settlement boundary, other than being within a reasonable vicinity of the quarry source. It is accepted that the greater thickness likely to be required may militate against use on a more restricted site.

Sustainability

33. The paragraph 131 requirement is that the outstanding or innovative design should promote high levels of sustainability, and the re-use of an otherwise waste material would be in line with Development Policy 7 on using locally sourced or recycled materials. Whilst the photographs in the Construction Method Statement indicate a quarry with significant and unsightly waste tips, it is understood that the aggregate quarries more locally do not have the same high level of environmental adverse effects due to the nature of the product, and local residents asserted that waste is offered for re-use already.
34. Nevertheless, the beneficial use of a greater percentage of the dug material and within a short distance is a benefit to the sustainability of the quarrying process, and cement-based products as the more usual alternative can be very energy consuming.

Raising the Standard of Design

35. For similar reasons, the introduction of this use of material could assist in meeting this aspect of the Framework paragraph, the weight attaching to this being tempered by the apparent need for thicknesses that may not suit all situations, and as distances from the source increase, the economic and environmental equation could change. The appellant is of the view that other sources of quarry waste could perform similarly to the basalt under consideration, which could widen the choice. The architectural design itself is however very site-specific and the degree to which it would lend itself to a more general application or raising of standards is less clear.

Biodiversity

36. The proposal includes well-developed plans to improve the biodiversity of the land, and this is clearly feasible given the amount of blue-edged land in addition to that occupied by the building. However, although the land is described as unused, and comments were made at the site inspection as to its condition having been allowed to deteriorate, such 'unused' land within a rural agricultural area has an ecological value if left alone.

Planning Balance and Conclusions

37. Paragraph 79 is specific as applying to 'isolated' dwellings and this reference has not been altered in the 2018 nor 2019 editions of the Framework, notwithstanding the 'Braintree' judgments predating those revisions. An appraisal of a paragraph 79e) proposal would therefore be less likely to involve nearby buildings and the need to significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area, as contained in that test, is substantially different from the requirement in paragraph 131 to fit in with the overall form and layout of the surroundings.
38. It is quite possible that a truly isolated site could be enhanced by the addition of high-quality built form, and permissions have been granted in various cases for such proposals. However, as made clear in the Development Plan and the Framework, context is important and in this case that context includes existing patterns of development, and the requirements of paragraph 131 on achieving well-designed places should take precedence. The failure of the proposal to acceptably fit in with the overall form and layout of its surroundings is an overriding consideration as visual harm would be caused through the building's scale, disposition on the land and elevated position.
39. The proposal does not accord with Development Plan policies on the location of development and the need to respond appropriately to the context of the site. There are no other considerations such as the quality of the design or the proposed level of innovation that outweigh the harm identified and the policies of restraint outside of a settlement boundary should not be set aside in this case. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

C Langford	Planning Officer Mendip District Council
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FOR THE APPELLANT:

K Evans	TLT Solicitors
M Williams	MJW Architects
K Brown	Structural Engineer
	KB2 Consulting Engineers
A Crossman	Ecologist
	Crossman Associates
S Powell	Appellant

INTERESTED PERSONS:

A Goulding	Resident
N & M Housley	Resident
L Francis	Resident

DOCUMENTS

Document	1	Notification letters submitted by Council
Document	2	Extract of footpath map submitted by Council
Document	3	Proposed conditions and appellant's agreement to pre-commencement conditions