



Appeal Decision

Hearing Held on 29 June 2020

Site visit made on 23 June 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/Q3305/W/19/3239928

Oak Tree Paddock, Whitemill Lane, Frome BA11 4EU

- 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 Ms C Bell against the decision of Mendip District Council.
 - The application Ref 2019/0131/FUL, dated 18 January 2019, was refused by notice dated 30 August 2019.
 - The development proposed is change of use to residential use of a yurt.
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Decision

1. The appeal is allowed and planning permission is granted for change of use to residential use of a yurt at Oak Tree Paddock, Whitemill Lane, Frome BA11 4EU in accordance with the terms of the application, Ref 2019/0131/FUL, dated 18 January 2019, and plans CB19-SLP and MW003/01 rev A, subject to the following condition:
 - 1) The development hereby permitted shall be occupied by Ms C Bell only and for a limited period being the period of 3 years from the date of this decision. Within 1 month of that limited period, or when the premises cease to be occupied by Ms C Bell, whichever is the sooner, the use hereby permitted shall cease and all materials and equipment brought to the site in connection with the use shall be removed.

Procedural matters

2. Whilst my decision is to allow the appeal, the effect is to grant permission only for a temporary period of time for the reasons set out below.
3. It appears that, when notifying interested parties of the Hearing arrangements, the Council also sent a letter in error advising that the Hearing was postponed. However, interested parties did attend the Hearing and clarified that their neighbours were aware of the final arrangements.
4. Moreover, during the Hearing, some nearby residents contacted other interested parties to advise that they could join the proceedings. They were able to attend and give their views, or have points to be made on their behalf. I am satisfied, therefore, that nobody has suffered injustice as a result of the Council's notification process.
5. I carried out a site visit from public land on an unaccompanied basis in the week preceding the Hearing. During the Hearing I sought views as to whether it was necessary for me to carry out a further site visit to include the appeal

site itself and neighbouring property. I have taken account of the comments made and in light of the main issues, I am content that a further site visit is not necessary for me to properly understand the relationship of the site to its surroundings.

6. The yurt is already on the site and occupied by the appellant.

Main Issue

7. The main issues are:

- Whether the site is an appropriate location for a residential use, with regard to local and national planning policy;
- The effect of the development on the character and appearance of the area;
- Whether there are any other material considerations that might outweigh any conflict with the development plan.

Reasons

Location

8. Frome provides a wide range of services and facilities and is identified for further development in the Mendip District Local Plan Part 1: Strategy and Policies 2006-2029¹ (LP). The LP sets a development boundary for Frome, within which is residential development at Yeomans Lodge and Catherston Close, which are close to and visible from the appeal site. The site is outside the development boundary and therefore in the countryside for planning policy purposes.
9. I was told at the Hearing that residents of Yeomans Lodge and a care home also own additional 'paddock' land that is outside the development boundary but alongside and adjoining the appellant's land. However, the appeal site is on the part of the appellant's land furthest from the built form, alongside Whitemill Lane and there is an undeveloped gap between it and the main built up part of Frome, within the development boundary.
10. The LP, through Policies CP1, CP2 and CP4 does not permit unrestricted residential development in locations outside the development boundary, other than in certain circumstances. One such circumstance is for the provision of affordable housing.
11. However, both LP Policy DP12 and Policy DP24 of the emerging Mendip District Local Plan Part 2, relating to the provision of affordable housing or housing for those in housing need, require sites to be adjoining settlements which, as noted above, the site is not. Despite the connection provided by the paddock land, the visual separation between the built form and the specific proposal before me means that it cannot be said to adjoin Frome. Neither policy, nor the draft Supplementary Planning Document: Self and Custom build single-plot exception sites, to be associated with Policy DP24, therefore provide support to the proposal. Accordingly, the proposal conflicts with LP Policies CP1, CP2 and CP4.

¹ Adopted 15 December 2014

12. Around the appeal site, on Whitemill Lane, are a number of other buildings in a variety of agricultural and equestrian uses. The appeal site is at one end of this cluster of buildings and there is a conventionally constructed dwelling towards the other end. The appellant confirmed at the Hearing that it was not argued that this cluster of development should be considered a settlement in its own right and given the limited residential development here, I find that it should not.
13. However, the appellant does argue that the site is not isolated from Frome and therefore not a location where development should be avoided following Paragraph 79 of the National Planning Policy Framework (the Framework). The Judgement of *Braintree District Council v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610* is relevant here. Paragraph 31 of that Judgement indicates that the term 'isolated' connotes a dwelling that is physically separate or remote from a settlement.
14. My attention has also been drawn to two appeal decisions that considered this point. In one at Church Farm² it is clear that the site was closer to the village of Willoughby on the Wolds than those distances to Frome from the appeal site described by the appellant. This does not assist me, therefore.
15. In the other appeal at Cuddyford Meadows³, the Inspector noted that the site was not isolated. That site may have been further from a nearby settlement than the straight line distance from the appeal site to Frome. However, as the matter was not in dispute, there is limited information or analysis in the Decision Letter as to the general site context and its relationship with the settlement. There are, therefore, few guiding principles to aid my interpretation in the present case, which must be determined on its own merits.
16. Although there are some visual links between the site, Yeomans Lodge and Catherston Close, there is a greater separation between the site and the built up area via the road network. Whilst the road connection into the settlement may be easy and the walking distance is not great, it does involve a length of road that is clearly within the countryside, setting the site apart from the settlement. It is, therefore, located away from the settlement of Frome.
17. Despite the short straight line distance from the site to the Yeomans Lodge and whilst appreciating the cluster of buildings nearby, following *Braintree*, I conclude that the site is 'physically separate or remote' from Frome. Whilst the proposal may bring some opportunities to enhance the vitality of rural communities, I, therefore, find the location to be one where the Framework indicates that new homes should be avoided.
18. Whilst the type of accommodation at the site is temporary in nature and has a low impact upon the site and its surroundings, the foregoing indicates a conflict with the development plan in terms of the location of development. Neither the policies of the Framework read as a whole, nor any other material considerations indicate otherwise that the location may be suitable.

Character and appearance

19. The yurt is sited close to Whitemill Lane beyond which the land slopes up steeply to the defined edge of Frome. The structure is low and surrounded by

² Appeal Ref: APP/P3040/A/13/2191142

³ Appeal Ref: APP/J9497/W/17/3168480

established boundaries. As already noted, there are a number of other buildings nearby. Although it may be visible to nearby residents from private land and more exposed to the lane during winter months, the topography and surroundings mean that the site is not prominent, and the yurt is not intrusive or harmful to the landscape.

20. I note that the surrounding buildings are generally agricultural and equestrian which is the general character and appearance of this urban fringe location. The yurt does not reflect this. Residential uses, regardless of the size and construction of the dwelling, also tend to bring domestic paraphernalia onto the site, including additional vehicles and the like. However, given the characteristics of the area, including areas of hardstanding associated with the surrounding equestrian uses and established boundaries, this has not caused demonstrable harm to the character and appearance of the area.
21. I note that there are other buildings and developments at the site and some local residents have suggested that I should consider the effect of all structures and uses. However, only the matter of the yurt, together with associated domestic activity, is before me.
22. LP Policy DP1 requires proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness. Whilst there is no clear enhancement arising from the proposal, resulting in a small tension with part of the policy, the lack of harm means that local identity and distinctiveness has been maintained. Moreover, the more recent Framework, at Paragraph 130, only requires development to take opportunities for improving the character and quality of the area. This reduces the weight that I attribute to the technical conflict with the enhancement part of the policy and, overall, I find that there would be no harm to the character and appearance of the area.

Other material considerations

23. The appellant has agreed that her land can be used by the Frome Field 2 Fork initiative, aimed, in part, at increasing local food production and providing education activities. Her land also offers opportunities for some disadvantaged members of the local community to experience the countryside, low impact living and food production methods which I was told was important, given the Council's declaration of a climate emergency. Whilst I understand that some of these initiatives may not proceed if the appellant did not live at the site, there is no substantive evidence that they could not operate in some form, or that their contribution to the local community is so great as to justify maintaining a residential presence at the site.
24. The appellant's particular circumstances and needs are such that she has less opportunity to access suitable housing than many other members of society and so has chosen to live at the site. Therefore, in making my decision, I have had due regard to the need, set out in the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, to (in particular) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
25. I can appreciate how the geometry and construction of the yurt is particularly suited to managing the appellant's personal needs and carrying out essential exercises. The yurt's connection to nature and the surrounding environment is also beneficial to the appellant's mental wellbeing. Whilst she may be physically

able to carry out some day to day activities on and around the appeal site, the benefits of the yurt and the site's environment are all supported by evidence from medical practitioners.

26. However, the medical evidence does not go so far as to say that these benefits could not be replicated within more conventional types of housing. Whilst the appellant and her representatives confirmed at the Hearing that they were not aware of any single floor buildings, connected to nature with the geometry of a yurt, it was not adequately set out that spaces in other suitably located buildings could not be adapted to provide a similar environment.
27. That said, if the appellant was unable to live in the yurt, there is no dispute that she would be reliant upon affordable housing through the various Registered Providers to meet her housing needs. I understand there to be a shortage of affordable housing, particularly adapted for disabilities, within the Council's administrative area. To maintain contact with her support network and continuity of healthcare, it is said to be desirable for the appellant to remain living near Frome.
28. Moreover, any affordable housing is likely to require significant adaptation before it could meet the appellant's particular needs. The Council indicated at the Hearing that, if approached by somebody in housing need, the relevant department would work with them to find suitable accommodation, even if this required works to the property. However, whilst she may have been dissuaded by the experience of others, the appellant confirmed at the Hearing that no formal approach has been made to the Council or other Registered Providers of housing in this regard. Without this, I cannot conclude that the appellant's housing needs are incapable of being met elsewhere.
29. There are extant Enforcement Notices that require residential occupation of the site to cease. Appeals⁴ in connection with the Notices were dismissed in 2011 and local residents have expressed concern that no formal action has resulted since. Nevertheless, whilst the reasoning in the previous appeal decisions is material, there is limited analysis within the Decision Letter in terms of the direct effect on the appellant or particular benefits of the yurt. I was told at the Hearing that additional evidence was available to me in this regard. I must, therefore, consider the appellant's particular circumstances afresh based upon the situation now. Accordingly, I give the reasoning in the earlier decisions, including that relating to Human Rights, limited weight.
30. The Council has expressed a desire to ensure compliance with the Notices. As a precursor to such action, further discussion with the appellant and fresh consideration by the Council of her Human Rights, particularly those under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, may be required. However, the Council's written submissions indicate that such up-to-date assessment has been undertaken as part of this planning application with the result being the refusal of permission.
31. It follows that there is a high likelihood that formal enforcement action would follow if I were to dismiss the appeal, so I must also carry out a full assessment of the implications as part of the decision-making process. In doing so, I have adopted a position that formal action would be close to immediate, as my decision in this appeal, concerned with a refusal of planning permission,

⁴ APP/Q3305/C/11/2143687 & 2143688

cannot influence any forthcoming enforcement process with the Council and time for compliance with the Notices has long passed.

32. For the above reasons, dismissal of the appeal is likely to result in the loss of the appellant's home. Such would be an interference with Article 8. The interference would be in accordance with the law as the development plan dictates that permission should be refused and the foregoing material considerations do not indicate a decision otherwise than in accordance with it. I also conclude that the interference would be necessary in a democratic society as the regulation of land use through development control measures is recognised as an important function of Government, including for the protection of the rights and freedoms of others. I must, therefore, consider whether the interference would be proportionate to the legitimate public end sought to be achieved.
33. Returning to my first two main issues, I have identified that no harm has arisen to the character and appearance of the area. I have found planning harm arising from the location of development, although many adverse impacts that might arise from the consequence of this, such as increasing the need to travel to services and facilities, are tempered by the short distances involved. Nevertheless, it is an important principle of the planning system that it operates in a plan-led way to safeguard wider public interests and the rights and expectations of the local community.
34. Weighed against this, if suitable accommodation could not be found, medical evidence indicates that the effect on the appellant's health and wellbeing would be severe. Given the nature of the planning harm, the immediate loss of the appellant's home would not be proportionate in this case. This is particularly because, having due regard to the PSED, it is likely to be some considerable time before suitable accommodation for the appellant is likely to be available. However, as previously set out, it has not been adequately demonstrated that, with sufficient time, other suitable accommodation cannot be made available.
35. Placing all of this in the balance, indicates that planning permission should be granted for a temporary period of time. Such would allow, for example, full exploration of housing availability with Registered Providers whilst upholding the principles of the development plan in the long term. There would still be interference with the appellants Human Rights as her home would not be secured on a permanent basis. However, accounting for the removal of immediate threat to her home and the lack of certainty over the inability to find another accommodation solution, such interference would be proportionate.

Other matters

36. I understand that protected species may use the site and local area. However, there is no substantive evidence that they are being harmed in any way by the development. I understand that at times, solar panels at the site are unable to provide sufficient energy for the site and a generator is required that is audible to some nearby residents. However, there is no substantive evidence that any noise is at such a level as to be detrimental to nearby residents' living conditions, and the main parties indicated that any nuisance could be dealt with through Environmental Protection legislation. Therefore, these matters do not lead me away from my above conclusions.

Conditions

37. To control the use in the manner set out in my decision, conditions are also required limiting occupation of the site to the appellant only and for a temporary period of time. Following discussions at the Hearing, a period of 3 years would be sufficient to enable suitable alternative accommodation to be found and adapted.
38. The Council suggested a condition setting out when the development was deemed to have been implemented, but this is implied by the date of my decision. At the Hearing a condition limiting permitted development rights for outbuildings was suggested but, even if such rights would be available, the extent of the application site, its limited visibility and other surrounding development would make it unnecessary.

Conclusion

39. For the reasons given above, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston MRTPI
Catharine Bell
Daniel Cutting

FOR THE LOCAL PLANNING AUTHORITY:

Carlton Langford – Planning Officer
Simon Trafford MRTPI – Team Leader – Development Management

INTERESTED PERSONS:

Kevin Barnes
Cllr Shane Collins
Jeremy Smalley
Dr Elise Wach
Jane Wood

DOCUMENTS SUBMITTED AT THE HEARING

Extract from Mendip Local Plan Part 1 Policy Map