
Appeal Decision

Site visit made on 21 August 2020

by **L McKay MA MRTPI**

Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/W3330/W/20/3250820

Land to south west of Nigella, Church Lane, West Monkton, Taunton, Somerset TA2 8QL

- 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 and Mrs N Munson against the decision of Somerset West and Taunton Council.
 - The application Ref 48/19/0059, dated 4 November 2019, was refused by notice dated 23 January 2020.
 - The development proposed is erection of a dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a dwelling at Land to south west of Nigella, Church Lane, West Monkton, Taunton, Somerset TA2 8QL in accordance with the terms of the application, Ref 48/19/0059, dated 4 November 2019, subject to the conditions in the following Schedule.

Procedural Matters

2. The application was made in outline with access to be considered and layout, scale, appearance and landscaping reserved for future consideration. Consequently, while some details have been provided of the layout and floor and roof plans of the proposed dwelling and landscaping of the site, I have considered these as illustrative only.
3. The appeal site is within 2km of Hestercombe House Special Area of Conservation (SAC) and as such I have a statutory duty to consider the effect of the proposal on the integrity of that European Site. I return to this below.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the area, with particular regard to trees; and the living conditions of the occupiers of neighbouring properties in respect of privacy.

Reasons

Character and appearance

5. The historic core of West Monkton comprises development close to the edge of the road, particularly along The Street, and stone walls are a prominent and characteristic feature of the main roads through the village. Away from this core there is more dispersed development, much of which is on rising land.

Mature trees and other vegetation give the area a verdant character. Dwellings generally have spacious plots, however trees and hedges around the boundaries provide a sense of enclosure such that, although gardens may be quite open, views across and through plots are relatively limited.

6. Nigella is a 2-storey dwelling near the top of a hill with a large garden, characteristic of the spacious, green character of plots in this part of the village. The substantial mature trees along the boundary with Mulberry House are visible for some distance and from surrounding roads and contribute positively to the character and appearance of the area.
7. The area bounded by The Street, Noah's Hill and Church Lane contains several large dwellings set one behind the other rising up the hill. In this context, the addition of a further dwelling behind these existing properties would be characteristic of the pattern of development in this part of the village.
8. The red line outlining the appeal site includes only part of the garden of Nigella, and all proposed development, including any engineering operations, would need to be achieved within the red line, as planning permission is not being sought for any development outside of this area.
9. The proposed dwelling could only reasonably be accommodated within the wider section of the site, which slopes steeply, with approximately 3m difference in levels from top to bottom. Consequently, significant engineering operations are likely to be needed to accommodate a dwelling in this area. A dwelling of the size indicated by the appellant may therefore be difficult to achieve, however, as the layout, scale and appearance of the proposal are reserved matters, the appellant's indicative design is not the only option available. As such, there is no compelling evidence before me to demonstrate that a dwelling and the required parking and turning areas along with the associated engineering operations, cannot be achieved within the defined appeal site.
10. While parts of Nigella can be glimpsed from some public viewpoints, existing hedges and mature trees largely screen the appeal site from view from The Street, Church Lane and the public footpath¹ along the northern boundary. As such, from public views the skyline along the top of the hill is largely unaffected by development. Due to the elevated position of the appeal site, there is potential for the proposed dwelling to be visible from the public realm, particularly when deciduous trees are not in leaf. However, the visual impact of the proposed dwelling would depend on its layout, scale and appearance and the landscaping of the site, which are not sought for consideration at this stage. From the evidence before me, I see no reason that an appropriate design could not be achieved that would respond to the topography of the site without resulting in prominent development on the skyline.
11. The proposed dwelling would also be surrounded by the existing garden, part of which is proposed to be transferred to it. The existing garden is already separated into two parts by vegetation and a substantial retaining wall, and as the whole garden is within the appellant's control, landscaping could be provided outside of the appeal site if necessary. Therefore, with careful design and landscaping, the proposed subdivision of the existing plot would not necessarily be evident from any public viewpoint. Although it would increase

¹ Footpath T32/20

the density of development in the area, the proposal would leave both the proposed dwelling and Nigella with reasonably spacious plots, comparable to the size of others in the vicinity. Consequently, the subdivision of the existing garden and insertion of a dwelling would not lead to a reduction in the openness of the area or a cramped and incongruous development, as the Council suggests.

12. Turning now to trees, a small part of the appeal site would extend within the Root Protection Areas (RPA) of trees T5 and T6. However, as layout is not yet fixed, it has not been demonstrated that any development, including engineering operations or car parking, would need to take place in that area. It would therefore be for the appellant to demonstrate at reserved matters stage that the proposed development was appropriately designed to avoid or mitigate any harm to the health of these trees.
13. The change in ground levels along the length of the proposed driveway would mean some engineering operations would be necessary to construct it, which have the potential to impact on tree roots. However, the proposed siting along the lower part of the slope, cutting through the existing wall, would limit the amount of regrading necessary and the wall already provides a substantial retaining structure, most of which is to be retained. All of the proposed driveway is outside of the RPA of the trees along the southern boundary and the retention of the wall alongside tree T1 would limit the extent of works in that area. Furthermore, given the direction of the slope, the driveway could be designed with any retaining structure or banks on the upslope side of the driveway, away from the trees. These factors reduce the likelihood of construction affecting the trees. There are also a range of options available for how such features might be constructed.
14. Consequently, although construction details have not been provided, I consider that there are technical solutions available to ensure that the proposed driveway could be constructed within the appeal site without adversely affecting the health of the trees. As access is a matter to be considered now, full construction details and methods of working in relation to trees would need to be secured by planning conditions.
15. The curve of the existing driveway, the change in ground levels, the wall around the neighbouring property and existing vegetation would largely screen the proposed driveway from view from Church Lane. As such, any banks or retaining structures needed to construct it would have a limited impact from the public realm, and with appropriate landscaping, are unlikely to have a significant adverse impact when seen from the shared driveway.
16. Changes are proposed to the low retaining wall at the entrance to Church Lane to improve visibility. A replacement wall is proposed slightly further back, details of which would need to be included in a future reserved matters submission for landscaping. As such, the proposal would not result in the loss of this characteristic feature or harm the appearance of the Lane.
17. Accordingly, overall, I consider that subject to careful design and landscaping, a dwelling and access could be accommodated within the appeal site without harm to the character and appearance of the area. Consequently, the proposal would not conflict with Policies CP8, DM1 and DM4 of the Taunton Deane Core Strategy 2012 (CS) or Policies D7 and ENV1 of the Taunton Deane Adopted Site Allocations and Development Management Plan 2016 (SADMP) which,

amongst other things, seek to avoid harm to the character of the area or to trees of value to the area and require development to achieve a high standard of design quality and sense of place.

Living conditions

18. Mulberry House and Oak House are set on lower ground than the appeal site. While existing vegetation partially screens views towards the windows of those dwellings, parts of their gardens can be seen in gaps between the existing trees and hedges, particularly along the southern boundary. Consequently, despite the separation distance there is already some overlooking of those properties from the appeal site.
19. There would however be potential for the proposed dwelling to cause additional overlooking of neighbouring properties, given its position on higher ground. The actual impact on the privacy of neighbours would however be largely determined by its design, including its scale, orientation, internal layout, position of windows and finished floor levels. These are all matters to be considered at reserved matters stage.
20. Furthermore, there would be opportunities for additional landscaping, including in the wider garden area, to provide screening between the existing and proposed dwellings. Some existing planting along the southern boundary has not established particularly successfully due to its proximity to large trees, however there is enough space between those trees and the appeal site for further planting without additional shading of the neighbouring garden. With appropriate choice of species and care to ensure that they established, this would further mitigate the potential impact on the privacy of the occupiers of Mulberry House.
21. While I understand the concerns of interested parties that there may be a desire to design the proposed dwelling to take advantage of views to the south, this would not override the need to safeguard the living conditions of neighbouring occupiers. This would be a matter to be assessed at reserved matters stage and if an appropriate design were not achieved, it would be within the Council's power to refuse to grant reserved matters approval. However, at this outline stage there is no substantive evidence before me that a dwelling could not be designed in such a way as to avoid direct or perceived overlooking of existing dwellings.
22. Accordingly, I consider that there is scope to accommodate a dwelling within the appeal site without additional harm to the living conditions of neighbouring occupiers in respect of privacy. I therefore find no conflict with CS Policies DM1 and DM4 which, amongst other things, seek to avoid unacceptable harm to the amenity of individual dwellings and require development to address design at a range of spatial scales, including spaces and buildings.

European Sites

23. Hestercombe House SAC is designated for its population of Lesser Horseshoe bats (LHB), with maternity roosts present at Hestercombe House and other known roosts within 200m of the appeal site. The conservation objectives of the SAC include maintaining the structure and function of the habitats of LHBs and the supporting processes of the habitats on which they rely. The landscapes around the SAC are important in providing foraging habitat needed

to maintain the favourable conservation status of the species. The evidence before me is that LHB are light sensitive, use deciduous woodland to feed and use linear habitat features as commuting corridors or 'flyways' which enable the bats to avoid crossing open areas.

24. Radio tracking studies carried out to inform the Habitats Regulations Assessment of the CS identified the area containing the appeal site as a feeding area for LHB. Although the appeal proposal does not propose the removal of existing trees and hedges, use of external lighting on the site might result in them being illuminated, disturbing use of these linear features by LHB and potentially preventing their use. Lighting can also affect the availability of night-flying insects. Consequently, the possibility of the proposed development having significant effects on the integrity of the SAC, either alone or in combination with other development in the area, cannot be ruled out. It is therefore necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the proposed development on the integrity of the SAC.
25. The Council has recommended that a condition be imposed on any grant of permission to require details of external lighting to be agreed, and that the lighting scheme be designed to avoid impacts on bats. Natural England has been consulted and has agreed that such a condition would avoid an adverse effect on the integrity of the SAC. I am satisfied that the Council's suggested condition, with a minor change to the wording to include lighting during construction, would be sufficient to mitigate the level of harm likely to be caused by the proposed development, and that the condition would meet the tests set out in paragraph 55 of the National Planning Policy Framework (the Framework). Therefore, subject to the proposed mitigation, the proposal would not result in a significant harmful effect on the integrity of the SAC.

Other Matters

26. The appeal site is adjacent to the West Monkton Conservation Area (CA). Although not part of the Council's reasons for refusal, interested parties have raised concerns regarding the impact of the proposal on the CA. I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
27. The CA derives considerable significance from the historic pattern of built development in the village, in particular the close-knit development of the historic core and the more dispersed, spacious development in wooded surrounds around the outskirts. Historic buildings, such as St Augustine's Church, and dry-stone walls along the edge of roads also make a substantial contribution to the character and appearance of the CA.
28. For the reasons set out above, subject to an appropriate design at reserved matters stage, the proposal would not harm the character and appearance of the area, and as such, would not adversely affect views into or out of the CA. Neither would it result in the loss of the dry-stone wall on Church Lane. Therefore, I find that the proposal would not harm the character or appearance of the CA or its setting, and as such would not harm its significance as a designated heritage asset. Consequently, it would not conflict with CS Policy CP8, SADMP Policy D7 or the Framework insofar as they seek to conserve and enhance the historic environment.

29. Previous site clearance may have impacted on the ecological interest of the site and the health of the trees, however this appears to have taken place some time ago. I can only consider the proposal on the basis of the evidence before me, including the condition of the site at the time of my visit and the expert opinions of ecologists and tree specialists which form part of the appeal submissions, to which I have had regard in reaching this decision. Any breach of wildlife legislation would be a matter for the relevant authorities and is outside my remit in determining this appeal.
30. Planning conditions can be used to safeguard protected species and the existing trees and hedges during construction and occupation of the proposed dwelling, and to require provision of the ecological enhancements put forward by the appellant, to achieve biodiversity net gain. These enhancements would include removal of woodchip piles resulting from previous site clearance and as such seek to address previous damage.
31. The first part of the proposed access from Church Lane is a driveway already shared by several properties. The existing passing bay was used for parking at the time of my site visit, however I saw that there were other opportunities along this driveway for vehicles to pass. Alternatively, vehicles could wait on Church Lane which, while not ideal, is unlikely to result in vehicle conflicts on this lightly trafficked lane. The access may not be of sufficient width to accommodate emergency vehicles, resulting in them waiting on the Lane, however this is no different to the situation in respect of the existing dwellings served by the same access. As such, there is no compelling evidence before me that the additional traffic generated by one dwelling would have an unacceptable impact on highway safety.
32. Existing dwellings are set back from the shared driveway, with substantial walls along much of its length. The existing use of the driveway is likely to already result in some noise, and one additional dwelling would generate relatively few additional vehicle movements. Vehicle speeds are also likely to be low due to the width and gradient of the driveway. As such, any additional vehicle noise generated by the appeal proposal would be limited, and would not have significant adverse effects on the living conditions of the occupiers of those properties.
33. National and local policy support the supply of housing, to which the proposal would contribute. As such, the provision of housing on other sites does not preclude the development of this site.
34. A surface water drainage scheme would be needed to ensure that the proposal did not result in flooding of the site or elsewhere, and could be secured by planning condition.
35. The Council has provided me with a copy of the West Monkton and Cheddon Fitzpaine Neighbourhood Development Plan (NDP), however neither the Council, the appellant or interested parties have inferred any conflict with its policies. Therefore, it has not been determinative in my decision.

Conditions

36. In addition to those mentioned above, conditions are needed to set timescales for submission of reserved matters and implementation of the proposal and to

require compliance with the relevant parts of the approved plans, in the interests of certainty.

37. Conditions to secure appropriate methods of working and construction details to protect trees, habitats and protected species are necessary prior to commencement of development, as they could be harmed by any stage of development, including site clearance. Those pre-commencement conditions have been agreed by the appellant. Details of lighting are necessary for the reasons given above, but are only needed before any lighting is installed, so do not need to be approved prior to construction as the Council suggests.
38. Details of materials are necessary in the interests of the character and appearance of the area. A hard and soft landscaping scheme and subsequent maintenance are needed in the interests of the living conditions of neighbours, and the character and appearance of the area and the CA.
39. Visibility splays, car parking and turning are required in the interests of highway safety, and cycle storage is needed to encourage sustainable modes of travel. The splays are required to accommodate construction traffic, however the Council's suggestion that they be provided prior to commencement of development would be unenforceable, as the works required to construct them also constitute development. I have therefore reworded the trigger for their provision. The highway authority suggests a structural assessment of the proposal be submitted, to be secured through a legal agreement. However, there is no substantive evidence before me that the proposed development would be likely to result in land stability issues that would affect the highway, and as such that suggested condition is not necessary. As the existing driveway already has a tarmac surface, there is no need for a condition to require a consolidated surface to be provided. I also note that electric vehicle charging points are sought, however I have not been directed to any development plan policies to support this requirement, and as such it has not been demonstrated to be necessary.
40. Where necessary, I have altered the wording of the Council's suggested conditions to ensure that they meet the Framework tests, however these are minor changes and as such I do not consider that they prejudice any party.

Conclusion

41. I have found that the proposal would not conflict with relevant development plan policies, and there are no material considerations that indicate that planning permission should not be granted. As such, the proposal would benefit from the presumption in favour of sustainable development in CS Policy SD1 and Framework paragraph 11.
42. Therefore, for the reasons set out above, the appeal is allowed.

L McKay

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with approved plan 4817/15A, except in respect of the layout of the dwelling shown on that plan.
- 5) No development shall take place, including demolition or site clearance (other than as required by this condition), until any vegetation in the construction area has been reduced by hand to a height of 10 centimetres above ground level, brushings and cuttings removed and the remainder left for a minimum period of 48 hours of fine warm weather (limited rain and wind, with temperatures above 10°C) before clearing. Once cut, vegetation should be maintained at a height of 10cm or less for the duration of the construction period. Written notification of these operations shall be submitted to the local planning authority prior to the work taking place.
- 6) No development shall commence, including demolition and site clearance, until all site operatives have been inducted by a licensed bat ecologist to make them aware of the possible presence of bats and other protected species, their legal protection, working practices to avoid harming bats, the working strategy for the project and the procedure should any protected species be encountered. Written confirmation of the induction shall be submitted to the local planning authority by the licensed bat ecologist within one week of the toolbox talk.
- 7) No development shall commence, including demolition, until an Arboricultural Method Statement and detailed scheme of tree protection measures in accordance with BS5387 have been submitted to and approved in writing by the local planning authority, which may be as part of a reserved matters approval. The method statement shall include full engineering and construction details, including scale plans and cross sections of the construction of the access and driveway. The agreed protection measures shall be erected prior to commencement of the development hereby permitted, including vegetation clearance, excavation, engineering operations, heavy machinery entering site or the on-site storage of materials. On installation of the tree protection measures, at least three working days' notice shall be given to the local planning authority that it has been installed prior to commencement of the development. The development shall be carried out in accordance with the approved scheme and method statement. The approved tree protection measures shall be maintained and retained for the full duration of construction or until such time as agreed in writing by the local planning authority. No activities, excavation or deposition of

material, or storage of equipment or materials shall take place within the protected areas at any time without the prior written agreement of the local planning authority.

- 8) All woodchip piles on the site and within the garden of the dwelling known as Nigella shall be removed in accordance with the recommendations of the Ecological Update by Halpin Robbins dated 07 May 2019.
- 9) There shall be no obstruction to visibility greater than 600 millimetres above adjoining road level in advance of lines drawn 2.0 metres back from the carriageway edge on the centre line of the access and extending to points 1 metre out from the carriageway edge 15 metres to the north and 33 metres to the south of the access. Such visibility shall be fully provided before any development, other than that necessary to comply with this condition, commences on the appeal site, and shall thereafter be maintained at all times.
- 10) No construction shall take place above slab level of the dwelling hereby permitted until details of the materials to be used in the construction of the external surfaces of that dwelling have been submitted to and approved in writing by the local planning authority, which may be as part of a reserved matters submission. Development shall be carried out in accordance with the approved details.
- 11) No external lighting shall be installed within the site or the garden of the dwelling hereby permitted at any time, including during construction, unless in accordance with details that have been submitted to and approved in writing by the local planning authority. The details shall show how and where external lighting will be installed, including through the provision of technical specifications, so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the approved design, and these shall be maintained thereafter in accordance with the approved design. Under no circumstances shall any other external lighting be installed without prior consent in writing from the local planning authority.
- 12) The dwelling hereby permitted shall not be occupied until the following ecological enhancement measures have been installed and a drawing showing their location has been submitted to the local planning authority:
 - i) two [2] tit boxes and two [2] open fronted boxes suitable for wrens and robins installed high on trees on a northerly facing aspect;
 - ii) one [1] bee brick built into the wall of the permitted dwelling about 1 metre above ground level on the south-eastern or southern elevation.
- 13) The dwelling hereby permitted shall not be occupied until parking and turning space for vehicles have first been provided within the site in accordance with details that have first been submitted to and approved by the local planning authority, which may be as part of a reserved matters approval. Such parking and turning areas shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.

- 14) The dwelling hereby permitted shall not be occupied until cycle storage has first been provided for the dwelling in accordance with details that have been submitted to and approved in writing by the local planning authority. The agreed storage shall thereafter be retained at all times.
- 15) The dwelling hereby permitted shall not be occupied until provision has been made on the site for the disposal of surface water so as to prevent its discharge onto neighbouring land or the highway, in accordance with details that have first been submitted to and approved by the local planning authority. The drainage provision shall thereafter be maintained so as to be operational and effective at all times.
- 16) The landscaping details required by condition 1 shall include:
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) means of enclosure and retaining structures;
 - iii) boundary treatments (including their height, type, materials, finish and colour);
 - iv) hard surfacing materials;
 - v) planting plans;
 - vi) written specifications (including cultivation and other operations associated with plant and grass establishment);
 - vii) schedules of plants noting species, plant supply sizes and proposed numbers/densities.

The landscaping works shall be carried out in accordance with the approved details in the first available planting season following first occupation of the proposed development. 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.