



Appeal Decision

Site visit made on 9 November by Ben Phillips BSc MSc MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

An Inspector appointed by the Secretary of State

Decision date: 18 December 2020

Appeal Ref: APP/Q3305/W/20/3256202

Land at Thorner Way, Naish's Cross, Chilcompton, Radstock BA3 4WU

- 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 R Thorner, Flower and Hayes Ltd against the decision of Mendip District Council.
 - The application Ref 2020/0547/FUL, dated 6 March 2020, was refused by notice dated 17 June 2020.
 - The development proposed is described as a proposed single storey detached garage block incorporating 6 No. garages with additional 6No. parking spaces and turning head.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on biodiversity;
 - Whether the appeal site is suitably located for a new garage block having regard to local and national planning policy;
 - The effect of the design of the proposed development on the character and appearance of the area; and
 - The effect of the proposed garage block on the living conditions of the occupants of dwellings along Thorner Way, with particular regard to noise.

Reasons for Recommendation

Biodiversity

4. The appeal site is enclosed by a tall wall and gates and mature landscaping, including areas of scrub vegetation. It adjoins agricultural land to the west, residential development to the north and east. To the south of the site is a band of trees with residential development beyond.

5. The Council and appellant in his Ecological Appraisal¹ (EA) have indicated that the site was previously used for storage and contains piles of stones, metal, wooden crates and spoil, which is largely covered by dense areas of ruderal vegetation.
6. The EA has identified that the unmanaged nature of the appeal site is likely to support a diverse invertebrate assemblage, which provides a foraging resource for bats and offers a suitable habitat for reptiles such as slow worm and grass snake, both of which are protected species², by providing suitable foraging, basking and hibernation areas. The scrub vegetation has been identified as providing suitable nesting/sheltering and foraging habitat for birds. The appellant submits that the site is not likely to support dormice, but this is disputed by the Council.
7. The Natural Environment and Rural Communities (NERC) Act (2006) states that a public authority must 'in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.
8. The proposed development would result in large areas of scrub and ruderal vegetation being removed from the site. Paragraph 175 of the National Planning Policy Framework (Framework) advises that unless significant harm to biodiversity can be adequately mitigated or compensated for, then planning permission should be refused.
9. In this case, I consider that a planning condition controlling the timing of the removal of scrub and any hedgerow would ensure that wild birds, their nests and eggs would be unlikely to be harmed. To protect the habitat of dormice conditions could also be attached requiring a fenced buffer zone to be provided between the development and nearby trees, and a condition controlling lighting would ensure that bats were not adversely affected by the proposal. However, the removal of the ruderal vegetation on the site could result in injury or death to reptiles on the site.
10. I note the suggestion that a reptile survey and mitigation could be controlled by planning condition, which would, amongst other matters prevent development on the site and removal of vegetation until surveys had been undertaken. However, without understanding the population of reptiles on the site, I am unable to determine whether the mitigation proposed in the appellant's EA would be suitable or could be secured based on the evidence before me. Paragraph 206 of the Framework requires planning conditions to be, amongst other matters, necessary, enforceable, precise and reasonable. In this instance, no detailed map of where the translocation site is located has been provided, only an address, and there is no mechanism before me which would secure the translocation site in the event that a medium to high population of reptiles were identified.
11. In light of the foregoing, I have insufficient information before me to demonstrate that protected species would not be adversely affected by the development proposed. Accordingly, the proposal conflicts with Policy DP5 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted

¹ By Crosman Associates, dated 3 May 2019

² Wildlife and Countryside Act 1981 (as amended)

2014) (LP), sets out that proposals with the potential to cause adverse impacts on protected and/or priority sites, species or habitats are unlikely to be sustainable and will be resisted, unless, amongst other matters, offsetting/compensation for the impacts can be secured. Moreover, the proposal conflicts with paragraph 175 of the Framework, and the environmental objective at its paragraph 8.

Location

12. The appeal site is located in close proximity to, but outside of the settlement boundary for Chilcompton. For planning policy purposes, it is located within the open countryside.
13. LP Core Policy 1 establishes the spatial strategy for Mendip directing the majority of development to the five principal settlements, and for development tailored to local needs to the Primary and Secondary Villages and other villages and hamlets. Within the countryside the policy establishes that development will be strictly controlled but may exceptionally be permitted in line with Core Policy 4: Sustaining Rural Communities. It also establishes that that *'any proposed development outside the development limits, will be strictly controlled and will only be permitted where it benefits economic activity or extends the range of facilities available to the local communities'*.
14. The development of the rural economy is supported by Core Policy 4 of the LP and it sets out that the establishment, expansion and diversification of business will be supported as long as it is in a manner and of a scale which is appropriate to the location and constraints upon it. LP Core Policy 3 also supports economic development which amongst other matters, encourages a diverse, robust, thriving and resilient local economy.
15. The proposed garage block would be available for lease from the appellant. Although small in scale, I consider that the proposal and the way it would be operated would comprise the establishment of a business. Correspondence from a local estate agent indicates that there is demand for such a facility within the community, and I have no substantive evidence before me to indicate otherwise.
16. Whilst it is acknowledged the economic benefit to the local community would be likely to be limited, the proposed development would extend the range of facilities available to the local community. The appeal site is located close to the population that the proposal is intended to serve and customers of the service would be able to walk or cycle to it from nearby homes. Accordingly, it would be appropriately located for the purposes of Core Policy 4 of the LP.
17. However, before I can conclude on this main issue it is necessary to assess the proposal's impact on the character and appearance of the area which is considered below.

Character and Appearance

18. The site is located at the end of a residential cul de sac and turning circle. It is separated from the open agricultural land by mature landscaping and is viewed both visually and physically as part of the cul-de-sac rather than the undeveloped countryside beyond.

19. This issue was recognised by an Inspector is determining an earlier appeal³ on the site and appears to have been accepted by the Council in its assessment of a previous application for flats⁴ on the appeal site whereby it seemed to accept the Inspector's findings that it was no longer appropriate to regard the site as if it were part of the undeveloped countryside.
20. Whilst the application for flats on the site was refused planning permission, it is clear from the Officer report that the Council found that the principle of housing on the site was acceptable and that the design of the flats was acceptable. The proposed garage block would be of a residential scale and whilst it would not be associated with residential dwellings within the road, it would not appear as an intrusive feature, nor would it be out of character with this residential environment. Its design and the materials proposed, stone and concrete tiles, are considered appropriate to its setting and would reflect nearby residential development. The justification and identified need for the development is not relevant to its impact in this regard.
21. In light of the foregoing, I consider that the proposed garage block would not lead to unacceptable urban encroachment into the countryside as asserted. Its siting and appearance would respect the character and appearance of the area, in accordance with LP Policies DP1, DP4 and DP7 which collectively seek to ensure that development proposals appreciate the local built and natural context and do not degrade the quality of the local landscape. Moreover, there would be no conflict with the Framework's aims to ensure that developments are visually attractive and sympathetic to local character and history.

Conclusion on Location

22. In light of the foregoing I conclude that the appeal site is a suitable location for the proposal. The development proposed accords with LP Core Policy 1, Core Policy 3 and Core Policy 4, which, in accordance with the National Planning Policy Framework, seek to support a prosperous rural economy with development that is sensitive to its surroundings.

Effect on living conditions

23. Thorner Way is a cul de sac of 6 dwellings, and it is likely that there would be a limited number of vehicle movements along it throughout the day. Although the proposal would be likely to increase the number of pedestrian and vehicle movements along the road, given the scale of the proposal such movements would be low. They would be unlikely to be discernible over and above the daily vehicle movements in the road, from residents, visitors and deliveries. As a consequence, I find that vehicle and pedestrian movements associated with the garages would be unlikely to result in noise and disturbance to nearby occupiers to the degree that would be harmful to the living conditions currently experienced.
24. It is noteworthy that in considering an earlier planning application on the site for 3 dwellings that the Council did not consider that traffic associated with this scheme would lead to unacceptable additional traffic movements, either in terms of highway safety nor noise and disturbance. Vehicles associated with the new garages would be likely to be similar to that associated with 3 dwellings.

³ Ref APP/Q3305/A/14/2220060

⁴ Ref 2019/1321/FUL

25. In light of the foregoing, I conclude that the proposed garage block and parking would not lead to unacceptable impact on the living conditions of the occupiers of the dwellings along Thorner Way. There is therefore no conflict with LP Policy DP7 which, amongst other matters requires development to protect the amenity of users of neighbouring buildings and land uses and provide a satisfactory environment for current and future occupants. Moreover, there would be no conflict with paragraph 127 f) of the Framework, in this regard.

Other Matters

26. The site lies within a Bat Consultation Zone of the Mells Valley Special Area of Conservation (SAC). The SAC is designated for its greater horseshoe bat feature. As I have found that the proposal is unacceptable for other reasons, it is not necessary for me to consider the implications of the scheme on the SAC.

Conclusion

27. Whilst I have found that the proposal would accord with development plan policy in terms of the location of the appeal site, the character and appearance of the area and the living conditions of nearby occupiers, insufficient information has been provided in order to mitigate against possible significant harm to biodiversity.
28. Accordingly, for the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

B Phillips

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby

INSPECTOR