



## Appeal Decision

Site Visit made on 1 February 2021

**by David Wyborn BSc(Hons), MPhil, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 March 2021**

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**Appeal Ref: APP/Q3305/W/20/3261275**

**Land between Budds Croft and Swedish Cottage, Brewery Lane, Holcombe, Shepton Mallet, BA3 5EF**

- 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 A Durici against the decision of Mendip District Council.
  - The application Ref 2019/2466/FUL, dated 23 November 2018, was refused by notice dated 1 October 2020.
  - The development proposed is the erection of self-build dwelling and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a self-build dwelling and associated works at land between Budds Croft and Swedish Cottage, Brewery Lane, Holcombe, Shepton Mallet, BA3 5EF in accordance with the terms of the application Ref 2019/2466/FUL, dated 23 November 2018 subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs has been made by Mr A Durici against Mendip District Council. This application is the subject of a separate Decision.

### Main Issues

3. The site lies beyond the defined settlement boundary of Holcombe and therefore on land defined as countryside. It is common ground between the main parties that the development of a new dwelling on the site would conflict with Policies CP1 and CP2 of the Mendip District Local Plan Part I: Strategy and Policies 2006-2029 (December 2014) (the Local Plan) which sets the locational strategy for development across the plan area. I will return to this matter later.
4. The application was refused for one reason and, on this basis, the main issue is whether the development would lead to additional vehicle movements along the designated public footpath such that this would lead to an unacceptable additional hazard, inconvenience and loss of amenity to users of the route.

### Reasons

5. The dwelling would be located on an undeveloped section of land towards the end of a fairly long access route, which can be reasonably described as a lane. The lane is single width and leads to six separate dwellings which are accessed, at various points, off the lane. The lane is also a public footpath that connects with the village broadly to the north and at the end of the lane the footpath

- divides with one route leading to open countryside and the other broadly to the south. The evidence indicates that the footpath is popular with local walkers.
6. The appellant's highway consultant indicates that a traditional detached family property in a location such as Holcombe is likely to generate between five and six two-way vehicle movements per day, although it is argued this would be lower as the appeal property would have a home office. As this facility may not be used, the County Council Highway Engineer agrees that it would be normal for the occupation of the dwelling to generate about five to six two-way vehicle movements per day and I have no reason to disagree with this assessment.
  7. I have carefully considered all the submissions from local residents who use the lane and who have commented on the likely impact of the additional traffic. Taking all the evidence into account, the anticipated level of likely vehicle movements associated with the proposed dwelling would be reasonably limited. In combination with the likely level of movements associated with the existing dwellings, and having regard to the position of properties along the lane, it would, in my view, be a reasonably infrequent occurrence for two vehicles to meet. In most circumstances, the free flow of vehicles along the route would not be materially affected by the proposal.
  8. Nevertheless, it is important to consider the situation when two vehicles would meet and interactions between vehicles and walkers. Looking at the details of the first section of the lane past the entrance to Hill House, and as far as Chez Nous, the surface has a hard finish. There is a curve in the lane within this section and there are walls, hedging and fencing along the sides. As a consequence of these features, any vehicles would be likely to be moving reasonably slowly and drivers would have time to stop if there was approaching walkers or other drivers.
  9. There are refuges and passing spaces, such as the space by the double garage on the right when entering from Brewery Lane, the access to Hill House and the access to Chez Nous which would allow most vehicles to pass if another vehicle was met and for walkers to step out of the way of vehicles. Consequently, I do not consider that the additional vehicles that are likely to be generated by the appeal dwelling would present a safety issue, cause any material inconvenience to walkers or other drivers using this section of the lane. In coming to this view I have had regard to the submissions, particularly from the owner of Hill House, including that in the past it was necessary to put in speed bumps to slow traffic although they have since been removed.
  10. Past Chez Nous, the surface is not made up but appears well maintained. There is a blind corner and then a straight section of lane to the entrance to Budds Croft. If two vehicles were to meet near the bend then one would need to reverse back towards the entrance to Chez Nous or into the area around the double garage and entrance to Hill House. This would be inconvenient and cause a minor delay. However, with the likely slow moving nature of the vehicles, because of the road conditions, this would not cause an undue safety hazard. Once a driver was past the bend there would be good forward visibility and approaching drivers would be able to wait at the entrances to either the proposed dwelling, The Forebury or Budds Croft to allow a vehicle to pass. Again this would not present an undue safety issue.
  11. In terms of walkers, the likely slow moving nature of vehicles at the bend beyond Chez Nous would mean that drivers would, I consider, have time to

stop if there was a walker within this section of the lane. Beyond that section of the lane, walkers and drivers would have good intervisibility because the lane is straight. In this area, walkers would be able to step back into one of the refuges provided by the accesses to the properties or move past a vehicle while it waited for walkers to pass. This would seem to be what happens at the present time when walkers meet vehicles associated with the existing properties and there is no robust evidence that this causes a material and regular form of undue inconvenience.

12. The turning of vehicles, including delivery vehicles to the various properties, either takes place at the end of the lane or at the individual properties. These areas are all on private land. The proposal would provide a reasonably generous on-site parking and turning area and an access way from the lane which would assist all passing vehicles and provide a further refuge for walkers. Consequently, the appeal dwelling would not materially alter the present arrangements for vehicles travelling along the route.
13. Drawing all these matters together, the additional vehicles associated with the proposed dwelling would be reasonably limited and I consider that it would be a fairly infrequent occurrence for two vehicles to meet. On those occasions, when vehicles did meet, there could be a limited degree of inconvenience, but this would not result in an undue safety hazard. In respect of walkers, the evidence does not demonstrate that there would be an undue safety issue and the level of inconvenience and any loss of amenity to walkers using the right of way would be minor and transitory.
14. I am conscious that the passing places are provided by the vehicular entrances to the properties and this is on private land. Local residents have indicated that there is no guarantee that they would be maintained and available in the future. However, these areas are mutually beneficial to all residents who may need to pass other vehicles on occasion. If the passing areas were prevented from being used, this would affect all residents along the drive and while this would increase the inconvenience to motorists and involve substantially more reversing manoeuvres, it would not lead to an undue safety hazard because of the generally slow moving nature of such vehicles. With the likely infrequent occurrence of two vehicles meeting, even were the privately owned passing spaces to be lost, I do not consider that this would warrant dismissal of the appeal.
15. The reason for refusal does not reference any concerns with the safety arising from the additional vehicles at the access onto Brewery Lane. After examining all the submissions from the appellant's highway consultant and the advice of the County Highway Engineer, I have found no reason to disagree.
16. As a consequence of the above considerations, the scheme would not conflict with the National Planning Policy Framework (the Framework) policy that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. I note that after considering the series of updated information from the appellant's highway consultant the County Highway Engineer came to the same conclusion and did not object on highway grounds. I also give weight to the response of the County Rights of Way Section that also raised no objection to the proposal.

17. In the light of the above analysis, I conclude that while the development would lead to additional vehicle movements along the designated public footpath, these movements would be at a likely level that they would not cause an unacceptable hazard, inconvenience or loss of amenity to users of the lane and right of way. Consequently, the proposal would not conflict with Policy DP9 of the Local Plan and the Framework which explains, amongst other things, that development proposals will be supported where they make safe and satisfactory provision for access by all means of travel.

### **Other Matters**

18. I have carefully considered the detailed submissions and objections from local residents and the Parish Council. The site lies outside the development boundary of Holcombe, however, this is not determinative for the reasons explained later.
19. I note all the comments on the ecological value of the site, particularly the historical information and works that have taken place on the land. Nevertheless, I am required to consider the proposal based on the evidence before me. In this respect the application was accompanied by an ecological assessment and the County Council Ecologist has not raised objection to the proposal on ecological grounds, subject to appropriate conditions attached to any approval, and I have found no reason to disagree.
20. The single storey dwelling, with its orientation and position of openings, would not cause undue overlooking and the use of the site for a dwelling is not judged to materially harm the living conditions of adjoining occupiers. Surface water drainage concerns, and any effect on the adjoining properties, could be addressed by the provision of a suitable scheme that would reflect the updated drainage strategy and investigations that have taken place.
21. Concern is raised with the realignment of the sewer which runs through the site. However, there is no technical objection to this element of the proposal and, consequently, I have no substantive reason to dispute that this could not be resolved in a satisfactory way.
22. Historically, other proposals for residential development on the site have been refused. However, these decisions merit limited weight. This is because the present proposal has been amended to seek to overcome the previous reasons for refusal, with up-to-date surveys, reports and evidence, and because the scheme needs to be determined taking into account that the Council is unable to demonstrate a Framework compliant supply of housing.
23. Finally, in terms of the other substantive matters raised in the objections, it is said that approval of the dwelling in this location would set a precedent and that other applications for development would come forward. Were other proposals to be submitted they would need to be considered at that time, in relation to the individual characteristics of the site, the then highway situation and the related policy position. I therefore do not consider that the proposal would set a generalised precedent for other proposals which would need to be considered on their merits.
24. I have noted the issue raised regarding lawful access to the site. The appellant has submitted details to clarify this matter and this issue has not impacted materially on the considerations before me.

## Planning Balance

25. The site lies outside the settlement boundary of Holcombe and as a consequence, the scheme would not meet with the strategic approach for the location of new residential development. Accordingly, I consider that this would conflict with the development plan when considered as a whole.
26. It is accepted by the main parties that the Council is unable to demonstrate a 5 year supply of deliverable housing land. In these circumstances, the presumption in favour of sustainable development as set out in paragraph 11d of the Framework is engaged. This indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. Due to the Council's housing land supply position, the location of the site outside the settlement boundary is not definitive in terms of judging the acceptability of the proposal. Holcombe is defined in Policy CP1 of the Local Plan as a Secondary Village. Secondary Villages are explained in the policy to offer some services and the best available public transport services making them appropriate for development aimed at meeting more localised housing, business and service needs. The site lies a little way from the settlement boundary and is within fairly convenient walking distance of the facilities within the village and links to public transport. The site, therefore, has reasonable accessibility to services and facilities other than by the private vehicle and this weighs in favour of the scheme.
28. I have found that the access to the site would be satisfactory and this does not weigh against the scheme.
29. In terms of other matters, the design, massing and form of the dwelling would be in character with the verdant surroundings set amongst a scattering of dwellings. The scheme would provide a small boost to housing supply assisting with meeting the housing needs of the plan area. The dwelling would be provided on a windfall site and be a modest sized dwelling adding to the overall mix and offer of housing. Additionally, the scheme would bring economic and social benefits to the area during construction and in subsequent occupation.
30. The proposal is advanced as a self-build dwelling for the appellant who is listed on the Council's Self-build Register. The delivery of custom and self-build dwellings is an important planning consideration, supported by the Framework and there are associated requirements for the Council to identify sufficient land for this purpose under the Self-build and Custom Housebuilding Act 2015 (the Act)<sup>1</sup>. There is no comprehensive evidence to demonstrate that this requirement is being met.
31. The appellant has indicated a willingness to accept a condition that the first occupation of the appeal dwelling be by a household who has registered on the Council's Self-build Register. I consider that the effective way to secure compliance for the delivery of the dwelling to meet the requirements of the Act would be through a planning agreement. The suggested wording for a planning condition could mean that a person on the Register may be able to purchase the property in its finished state without that person on the Register having the

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<sup>1</sup> And as detailed in The Self-build and Custom Housebuilding Regulations 2016.

ability to build in accordance with their plans and specifications. While this may be improbable in this particular case, nevertheless, I am not satisfied that the suggested condition would be effective and sufficiently precise to secure all the requirements of a self-build property in terms of the provisions of the Act. Consequently, I attribute the self-build aspect of the proposal limited weight.

32. Taking all these matters together, I consider that the harm that would result from the conflict with the locational policies of the development plan and with the development plan as a whole, are matters of minor weight. The reason for this includes, the locational circumstances of the site in relation to the settlement boundary adjoining a designated Secondary Village where occupiers would have reasonable access to local services and facilities. The benefits of the scheme which I have identified above would accord with the intentions and policy approach of the Framework. However, these benefits even taken together, because only a single unit of housing is to be provided, would only afford limited weight in favour of the scheme.
33. Nevertheless, when undertaking the tilted balance in accordance with paragraph 11d of the Framework, the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a consequence, the proposal would constitute sustainable development and this weighs heavily in favour of the scheme.
34. Accordingly, I consider that the material considerations associated with the scheme are of such weight that they indicate that the proposal should be determined otherwise than in accordance with the development plan. I therefore conclude that the appeal should succeed.

### **Conditions**

35. The Council has suggested a number of conditions, some of which have been proposed in a summary form, which I have considered taking account of advice in the Planning Practice Guidance. As a result I have worded the conditions and amended some of them for consistency, enforceability, clarity and reasonableness.
36. In addition to the statutory time condition, a condition requiring the development to be carried out in accordance with the approved plans is necessary in the interests of certainty.
37. The submitted plans do not include elevations of the car port. The location for the car port is shown on the submitted plans and the details are included on the 3 dimensional plans, so there is no doubt as to its impact. However, in the interests of certainty, a condition is necessary to require the submission and agreement to the elevational details of the car port.
38. It is necessary for a condition to be included that requires the submission and agreement to the external materials in the interests of the character and appearance of the area. A condition is necessary to ensure that the proposed car parking is made available and retained in the interests of ensuring that vehicles do not block the adjoining lane.
39. I am aware of the drainage reports, the on-site survey work, proposals for attenuation of surface water and also the concerns of neighbouring properties regarding potential flooding from surface water from the site. In the light of all

this information, it is necessary for a condition to require technical details of how surface water will be dealt with, so as to protect the amenities of the area, including neighbouring properties.

40. Details of landscaping, including boundary treatments, are necessary to be agreed and implemented in the interests of the character and appearance of the area.
41. In the light of the advice on the potential for contaminated land as explained in the consultation response, a condition is necessary to report and address any unexpected contaminated land. Having regard to the ecological report and recommendations, and the consultation response from the County Council Ecologist, a series of conditions, as recommended, to address potential ecological impacts are necessary.
42. The foul sewer is presently routed across the appeal site and would pass under the dwelling. The plans show a route to realign the foul sewer. A condition is necessary to ensure that this work takes place in accordance with an agreed specification and timetable, in the interests of maintaining a functioning sewerage system for local residents. This matter needs to be a pre-commencement condition, and this is accepted<sup>2</sup> by the appellant, so that details of this important matter are clear from the outset of any works and the amenities of residents of neighbouring properties are protected.
43. A condition as suggested by the appellant for the first occupant to be listed on the Self-build Register is not reasonable or necessary, and would not be fully effective in this case, for the reasons explained above. The absence of a condition in this regard would not prevent the site owner undertaking the proposal as a self-build unit of accommodation as envisaged.

### **Conclusion**

44. For the reasons set out above, and taking all other matters into account, I conclude that the appeal should be allowed.

*David Wyborn*

INSPECTOR

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<sup>2</sup> Email dated 18 November 2019

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan: 1803-S01, Proposed Block Plan: 1803-L02, Proposed Site Plan: 1803-L03, Proposed Elevations: 1803-L05, Proposed Elevations: 1803-L06 and Proposed Roof Plan: 1803-L04.
- 3) Prior to the construction of the car port hereby permitted, detailed elevational plans, including the finished floor level in relation to an adjoining datum, shall be submitted to and approved in writing by the Local Planning Authority. The car port shall be constructed in accordance with the approved plans and details.
- 4) No development shall take place above ground level until details/samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 5) The area allocated for parking on the submitted plan, Proposed Dwg No: 1803-L02, shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 6) The dwelling hereby permitted shall not be occupied until surface water drainage works and attenuation have been fully implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted to the Local Planning Authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the Local Planning Authority. Where a sustainable drainage system is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and provide, a management and maintenance plan for the lifetime of the development.
- 7) Prior to first occupation there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping, including hard and soft boundary treatments. All planting, seeding, turfing and boundary treatments comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and 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.

- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 9) Prior to occupation, a "lighting design for bats" shall be submitted to and approved in writing by the Local Planning Authority. The design 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 design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed.
- 10) Within 6 weeks of vegetative clearance and or groundworks commencing a survey for badger activity will be undertaken by a competent ecologist and reported, along with any mitigation measures required, in writing to the Local Planning Authority. The mitigation measures shall take place as specified.
- 11) No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the Local Planning Authority by the ecologist.
- 12) Any vegetation in the construction area should initially be reduced to a height of 10 centimetres above ground level by hand, 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 of 10°C or above) before clearing to minimise the risk of harming/killing any reptiles that may be present and to encourage their movement onto adjoining land. Once cut vegetation should be maintained at a height of less than 10cm for the duration of the construction period. Any features such as log piles which potentially afford resting places for reptiles and / or amphibians will be dismantled by hand by a competent ecologist in April or August to October and any individuals found translocated to a location agreed with the Local Planning Authority prior to works commencing on site in that area. A letter confirming these operations and any findings will be submitted to the Local Planning Authority by the ecologist responsible within one week of their implementation.
- 13) A Habitat 001 bat box or similar shall be built into the structure at least four metres above ground level under the apex of the south facing elevation. Two Vivara Pro Woodstone Nest Boxes (32mm hole version) shall

be installed on the northerly facing aspect of trees and maintained thereafter. Two Vivara Pro Barcelona Woodstone Bird Box (open front design) or similar shall be installed 1.5m and 3m high on the shaded side of retained trees and maintained thereafter. Photographs of the installed features will be submitted to the Local Planning Authority prior to the completion of construction works.

- 14) Prior to work commencing on site, a detailed specification and timetable for the re-routing of the foul sewer shall be submitted to and agreed in writing by the Local Planning Authority. Once agreed the works shall take place in accordance with the approved specification and timetable.

End of Schedule