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# Appeal Decision

Site Visit made on 5 July 2021

**by Mr S Rennie BSc (Hons), BA (Hons), MA, MRTPI**

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

**Decision date: 17 August 2021**

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**Appeal Ref: APP/Q3305/W/21/3272329**

**Land adjacent to The Retreat, Frome, BA11 5JU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Family Sutton Solutions Ltd and Mr & Mrs B. Sutton against Mendip District Council.
  - The application Ref 2020/0800/FUL, is dated 18 April 2020.
  - The development proposed is the erection of employment studio building and 4 no. dwellings with associated highway and landscaping works.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of an employment studio building and 4 no. dwellings with associated highway and landscaping works, at 'Land adjacent to The Retreat', Frome, BA11 5JU in accordance with the terms of the application, Ref 2020/0800/FUL, dated 18 April 2020, subject to the conditions in the attached schedule.

## Main Issues

2. The planning application was not determined by the Council before it was appealed. From the Council's Appeal 'Statement of Case', interested party correspondence and all the other evidence submitted I would regard the main issues as being the effect of the development on the use of adjacent land by the public as a pathway. Furthermore, there is also the issue of the barns/buildings which were demolished on site and other works done prior to the submission of this proposal to the Council.

## Reasons

### *Footpath Issue*

3. It is clear from the submitted evidence, especially from interested parties, that some people regard there to be a footpath that runs along the edge of the River Frome, adjacent to this site. Indeed, I am aware of an application for this to be a formal right of way, although the latest information I have is that it is not determined.
4. Based on the current situation, it is my understanding from the evidence that there is no formal public right of way adjacent to the site. Notwithstanding this, there are policies that relate to access to the River Frome, such as Policy CP6 of the Local Plan and Policy POS1 of the Frome Neighbourhood Plan. Policy POS1 states that development should take advantage of opportunities to improve the River Corridor environment.

5. Whilst these policies are considered against the proposals, in this case the site area is set back from the river edge, allowing for a space that could be utilised for a footpath in the future, possibly as a formal public right of way, plus being a benefit for wildlife near the river. By keeping that area adjacent to the river free from proposed development then there remains space that could be utilised to improve access to the river corridor. However, there is no specific requirement in adopted policy to provide a footpath. Also, the development would not mean that a riverside footpath cannot be achieved either. Therefore, there does not appear to be any conflict with the application for a public right of way along the riverside or the future potential for such a feature.
6. As such, the proposal does not conflict with Policy CP6 of the Local Plan or Policy POS1 of the Frome Neighbourhood Plan. As this area of the riverside is not within the development area as proposed, it would not be necessary or reasonable to require assurances of a public footpath via either a condition or legal agreement with planning obligations.

#### *On site demolition*

7. From the submitted evidence it is clear that there were buildings on site, described as older barns for example, which have been demolished. Whilst the site clearance formed part of the approval under application ref: 2017/3154/FUL, there were pre-commencement conditions which were not discharged before this.
8. Whilst this history of the site is noted, the situation is that these buildings are already gone. I have considered the proposal based on the current site circumstance (which I observed on site) and the plans and drawings submitted with this appeal, which do not include reference to 'retrospective' buildings for demolition. If there were unauthorised demolitions works to buildings then this would be a possible enforcement matter for the Council, but it would not be reason to dismiss this appeal. Whilst the submitted survey plan may be out of date, I do not consider it necessary for additional plans to be submitted before I can determine the appeal.

#### **Other Matters**

9. The proposal would result in some additional traffic on what are narrow roads near the site, but this is a residential area and there is no detailed evidence before me that the additional traffic generated by the proposal would result in highway safety issues or significant congestion on the network. There is also no substantive evidence that the access would not be sufficient for emergency vehicles/services. I note that there is no objection from the Highways Development Officer on this matter. Sufficient parking and turning can be provided on site.
10. The construction phase of the proposed development would likely result in some disruption, but this should be temporary and there is no reason to conclude that the levels of noise, construction traffic or dust for example, would have significant impacts to neighbour living conditions.
11. The development as proposed is of a suitable design and density, which does not overdevelop the site. There would also be no harm to the significance of the Conservation Area as a result of the proposal due to the appropriate and sympathetic design. The built development is set away from the riverside,

closer to the existing dwellings, which I would regard as suitable in terms of responding to the river corridor setting.

12. I acknowledge that the site is within Band C of the Bat Consultation Zone for the Mells Valley SAC. However, I would agree with the Council in that the evidence demonstrates that the proposed development is unlikely to have an effect on greater horseshoe bats associated with this SAC.

### **Conditions**

13. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework. The conditions I have included from the recommended list have been subject to some alterations to improve clarity, conciseness and ensure consistency with the Framework and PPG.
14. I have attached the standard time limit condition and a plans condition as this provides certainty. I have also added a condition concerning materials to ensure a satisfactory appearance.
15. To ensure there will be the commercial aspect of development, a condition requiring the commercial/business and service building referred to as studios on the approved plans to be provided is included.
16. Considering its location adjacent to the river corridor, and in the interests of visual amenities, a hard and soft landscaping condition is imposed.
17. The site could contain contaminated land due to previous uses. As such, there is a series of conditions set out to require an investigation prior to commencement of development, with remediation required if necessary.
18. Considering the site is close to the river and potential areas of flooding, a condition requiring the development to be in accordance with the submitted Flood Risk Assessment is imposed.
19. To ensure suitable parking and turning space, a condition requiring these aspects of the development to be provided is imposed. A condition requiring the visibility splays is also required in the interests of highway safety.
20. In the interests of sustainable drainage, a condition requiring surface water drainage details is imposed.
21. In the interests of ecology, a lighting scheme and also a requirement for other ecological enhancements such as bird boxes are included.
22. Finally, a construction environmental management plan which is primarily for the safeguarding of local ecology, is required.
23. The pre-commencement conditions included are justified in these circumstances, being that they relate to ecology and contaminated land for example, with issues that need to be addressed before construction.
24. I have not imposed the recommended conditions to remove permitted development rights as there is not sufficient evidence to demonstrate that there are the exceptional circumstances needed for these to be imposed.

## Conclusion

25. For the reasons given I conclude that the appeal should succeed, subject to the conditions set out below.

*Mr S Rennie*

INSPECTOR

## APPENDIX – 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: Access Arrangement Drawing No: 19087-GA01, 1656-00, 1656-05, 1656-06, 1656-07, 1656-08, 1656-09, 1656-010, 1656-011, 1656-012, 1656-013, 1656-014, 1656-015, 1656-016, and 1656-101.
- 3) No occupation of the residential dwellings hereby approved shall commence until the commercial/business and service building referred to as studios on the approved plans have been provided in accordance with details shown on the approved plans.
- 4) The development hereby approved shall be carried out using external facing and roofing materials as specified on the application plans and form.
- 5) Notwithstanding the details submitted and having regard for the Verification Survey Report (2 March 2020), the development hereby approved shall not be occupied until a hard and soft landscape scheme has been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, species and positions for new trees and plants, boundary treatments, surfacing materials (including roadways, drives, patios and paths) and any retained planting having regard for ecological enhancements within the verification survey report. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season either with the same tree/plant as has previously been approved, or with other trees or plants of a species and size that have first been approved in writing by the Local Planning Authority.
- 6) No occupation of the development shall commence until the areas allocated for parking and manoeuvring shown on the submitted plan (Proposed Drawing No: 1656/06) have first been provided on-site. Thereafter the parking and manoeuvring areas shall be kept clear of

obstruction at all times other than for the parking and manoeuvring of vehicles in connection with the development hereby permitted.

- 7) The approved development shall only be carried out in accordance with the approved Flood Risk Assessment (by AW Water Engineering dated 26-03-20) and the following mitigation measures:
  - a) Finished Floor Levels must be no lower than 68.3 metres 'Above Ordnance Datum'.
  - b) No development within Flood Zones 2 and 3.
- 8) No development shall commence unless an investigation and risk assessment of the nature and extent of contamination on site and its findings have been submitted to and approved in writing by the Local Planning Authority. This assessment shall be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall consider all previous uses and shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The assessment and written submission shall include a survey of the nature, extent and significance of any contamination; an assessment of the potential risks; and an appraisal of remedial options, with justification for the preferred option(s).
- 9) No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, controlled waters, ecological systems, buildings and other property and sites of historical interest, has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment concludes that a remediation scheme is not required.

The development shall not commence until the approved remediation scheme has been carried out, excepting those works required to carry out remediation, or in accordance with an approved timetable of works.
- 10) No occupation shall commence until a verification report has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The verification report shall confirm that the approved remediation has been completed and demonstrate the effectiveness of the remediation carried out.
- 11) In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a remediation scheme with timetable to address this contamination shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be implemented as approved.
- 12) Prior to the construction of any drainage infrastructure as part of the development hereby approved, a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the

hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of phasing, implementation and maintenance for the lifetime of the development and subsequently be implemented in accordance with these approved details.

- 13) No development shall take place (including ground works and/or vegetation clearance) until an updated construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person
- h) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 14) No external lighting shall be erected or provided on the site until a 'lighting design for bats' statement has been submitted to and approved in writing by the Local Planning Authority. The design statement 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 thereafter 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 statement.
- 15) Prior to the first occupation of any of the dwellings or the use of the studio, the site access shall be constructed which shall have no obstruction to visibility greater than 600 millimetres above the adjoining road levels within the visibility splays, as shown on the submitted plan - Access Arrangement Drawing No: 19087-GA01 within the Transport Technical Note. These visibility splays shall be maintained at all times thereafter.
- 16) No occupation of the approved development shall commence until the following have been mounted on trees/buildings –

- a) Two Schwegler 1SP Sparrow terraces or similar at least one metre apart directly under the eaves and away from windows on the north elevations on one plot
- b) Three Vivara Pro Woodstone Nest Boxes (32mm hole version) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter
- c) Three Vivara Pro Barcelona Woodstone Bird Box (open front design) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter
- d) A bee brick built into the wall about 1 metre above ground level on the east or southeast elevation of each dwelling.

**END of SCHEDULE**