



Appeal Decision

Site Visit made on 18 October 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/Q3305/W/21/3278611

Owley Farm, Ditchheat, Shepton Mallet BA4 6NB

- 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 Messrs D and J Nash against the decision of Mendip District Council.
 - The application Ref 2021/0383/FUL, dated 17 February 2021, was refused by notice dated 7 May 2021.
 - The development proposed is described as change of use of land to form an extension to the garden, erection of a detached garage with associated landscaping and the construction of a landscaped bund (amendment to planning permission 2020/0740/FUL).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to form an extension to the garden, erection of a detached garage with associated landscaping and the construction of a landscaped bund (amendment to planning permission 2020/0740/FUL) at Owley Farm, Ditchheat, Shepton Mallet BA4 6NB in accordance with the terms of the application, Ref 2021/0383/FUL, dated 17 February 2021, and the plans submitted with it, subject to the following 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: 19031-05 Revision B; 19031-06 Revision C and; Figure 1 (Landscape Plan) Ref P0493 dated 07/01/2021.
 - 3) All hard and soft landscape works shall be carried out in accordance with the approved Figure 1 (Landscape Plan) Ref P0493 dated 07/01/2021. The works shall be carried out prior to the first use of the garage hereby approved. Any planting, seeding or turfing comprised in the approved details of landscaping which, within a period of five years from the completion of the development, die, are removed, or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning authority. All hard landscape works shall be permanently retained in accordance with the approved details.

Preliminary Matter

2. The National Planning Policy Framework (the Framework) was revised on 20 July 2021. Insofar as it is relevant to this appeal, I have taken the Framework into account in reaching my decision.

Main Issue

3. The main issue in respect of this appeal is the effect of the landscaped bund on the character and appearance of the area.

Reasons

Background

4. The appeal site has an extant planning permission (referred to in the description of the proposal above) for the change of use of the land to garden and the erection of a garage, which appears to be identical to the one the subject of this appeal. The appeal proposal also includes the provision of a landscaped bund and it is this element of the proposal that the Council have found to be unacceptable.
5. The approved site and location plan relating to the extant permission (drawing number 19031-05 revision F) indicates the provision of a timber fence up to 2m in height along the length of the eastern boundary of the site. The permission was subject to a condition (numbered 4) which required the submission of a soft landscaping scheme for approval.
6. The Council argues that the fence could not be erected as the landscape condition requires that a suitable boundary treatment is brought forward for approval and it is very unlikely that a close boarded fence would be agreed. The appellants contend that whilst the condition requires the submission of a landscaping scheme, it does not require the scheme to then be implemented and maintained, such that the 'fall back' position is a 2m high close boarded fence along the entire eastern boundary of the appeal site.
7. On my reading of the condition in question, I find that there is no requirement to submit the details of the fencing for approval and that the condition does not require the implementation nor maintenance of the approved landscaping scheme. In addition, there is no evidence, based on what I have seen, that a bund and a fence could be erected simultaneously. Therefore, I conclude that there is a real prospect of a 2m high close boarded fence along the eastern boundary as indicated on the approved site and location plan (19031-05 Revision F) being implemented, given the appellants desire to create a private garden area. I shall return to this later in my decision.

Character and Appearance

8. The appeal site is a relatively flat triangular shaped site with a native hedge along one boundary and a post and rail fence on the opposing boundary, separating it from a field currently in agricultural use. A public right of way (footpath) passes through this field and across part of the appeal site.
9. The appeal site is set within a gently undulating landscape where wider views are intersected by established native hedges, mature trees and woodland clumps. The result is that views of the appeal site are localised, although it would be clearly visible to anyone using the footpath.

10. The introduction of a bund with symmetrical sides and an even shape, along the length of the new garden boundary would appear as an obviously man-made structure in the landscape. This would be at odds with the natural, gentle undulations of the landscape. Indeed, the Summary Landscape and Visual Appraisal (SLVA) submitted by the appellants, comments that the 'earth bank would provide a noticeable element within the predominantly agricultural landscape'.
11. A detailed landscaping scheme has been submitted as part of the proposal. Whilst this would help to soften its visual impact, it would not wholly assimilate it into the landscape given its man-made shape and form. This is acknowledged in the SLVA which concludes that 'the growth of the proposed landscape mitigation measures over time will help to restrict the influence of the proposed earth bank.'
12. As such, I find that the proposed bund fails to respect the character and appearance of the area which contributes to its local distinctiveness and as such, the proposal is contrary to Policies DP1 and DP4 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (LP) which seek to maintain and enhance local identity and distinctiveness and ensuring that developments are compatible with the prevailing pattern of natural and man-made features of the Landscape Character Areas. The proposal is also contrary to paragraphs 130 and 174 of the Framework which seek to ensure that proposals are sympathetic to local character including landscape setting and that they contribute to and enhance the natural environment. I also find that the proposal is contrary to policy DP7 of the LP which requires that proposals for new development are of a scale, mass, form and layout appropriate to the local context.
13. However, I must also balance the harm I have identified with the impact that the fall-back position of a 2m high close-boarded timber fence would have. Such a fence in this location would appear as a stark, urban feature in the landscape totally at odds with the native hedgerows and tree planting along boundaries which form part of the distinctive character and appearance of the landscape within which the appeal site is located. Unlike the bund, it would not have the benefit of any landscaping to reduce its impact over time and as such I find this to have a greater harmful impact than the proposed bund.
14. Therefore, whilst I find that the bund would detract from the character and appearance of the area, I also find that its impact would be less harmful than the realistic fall-back position of a 2m high close boarded timber fence. As such, I consider there to be sufficient material considerations to outweigh the provisions of the development plan in this instance.

Other Matters

15. My attention has been drawn to other bunds which have been approved in the locality. The only one which is intervisible with the appeal proposal is the one immediately to the north of the appeal site which encloses the Evercreech Junction Industrial Estate. It is clearly a significant man-made structure, having an even shape and form and landscaping at regular intervals along its length. I understand that it provides protection to local residents from the noise associated with the industrial estate and/or provides a means of rainwater harvesting and surface water attenuation. As such, it offers wider public benefits. The bund the subject of this appeal does not offer any such benefits

and as such I have not found the presence of this or other bunds in the area to be material to my decision.

16. The parish council have expressed concern that allowing the bund to be constructed would set a precedent. However, each case should be considered on its own merits and I have set out clearly in my reasoning, the very particular circumstances in this case with regard to the realistic fall-back option and as such, I do not consider that this would set a precedent for similar developments in the area.

Conditions

17. In addition to the standard time limit, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty. I have not found it necessary to condition the materials for the construction of the garage building as these are clearly set out on the application form. Given that the proposed landscaping scheme will assist with reducing the visual impact of the man-made bund, I have attached a condition to ensure that all hard and soft landscaping works shown on the approved plans are carried out prior to the first use of the garage to ensure that it is provided at an early stage in the development and its retention is necessary to protect the character and appearance of the area.

Conclusion

18. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alison Fish

INSPECTOR