



Appeal Decision

Site visit made on 16 March 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2022

Appeal Ref: APP/D0121/W/21/3283446

Land at Jubilee Lane, Langford BS40 5EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David O'Nions against the decision of North Somerset Council.
 - The application Ref 21/P/1306/FUL, dated 4 May 2021, was refused by notice dated 30 June 2021.
 - The application sought planning permission for outline application for the erection of a dwellinghouse (all matters reserved for subsequent approval) without complying with a condition attached to planning permission Ref 19/P/3091/OUT, dated 14 August 2020.
 - The condition in dispute is No 5 which states that: The occupation of the dwelling shall be limited to the applicant, Mr David O'Nions, his family and dependents only.
 - The reason given for the condition is: But for the special health and disability needs of the family, the development would be contrary to policies CS1, CS14 and CS33 of the North Somerset Core Strategy and policy SA2 of the North Somerset Sites and Policies Plan (Part 2 - Site Allocations Plan) and in accordance with policy CS26 of the North Somerset Core Strategy and policy DM42 of the North Somerset Sites and Policies Plan (Part 1 - Development Management Policies).
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Decision

1. The appeal is allowed and planning permission is granted for outline application for the erection of a dwellinghouse (all matters reserved for subsequent approval) at Land at Jubilee Lane, Langford BS40 5EJ in accordance with the application Ref 21/P/1306/FUL dated 4 May 2021, without compliance with condition number 5 previously imposed on planning permission Ref 19/P/3091/OUT dated 14 August 2020 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The reason given for imposing condition 5 on planning permission 19/P/3091/OUT included reference to Policy CS26 of the Core Strategy and Policy DM42 of the Sites and Policies Plan Part 1. However, I have not been provided with a copy of either of these policies and neither party make reference to them in their submissions. In the absence of any information to the contrary I have proceeded on the basis that neither go to the heart of the matter at appeal.

Background and Main Issue

3. Outline planning permission has been granted for a dwelling with a condition restricting occupation to the appellant and his family only. The appellant

initially sought to amend the condition to allow occupation of the dwelling by persons with special health and disability needs (as defined by Section 6 of the Equality Act 2010) and their family, or a dependant of such a person residing with him or her, or a widow or widower of such a person, any resident dependents, or carer last engaged in the care of the person after the persons death, on the grounds that the original wording was unreasonably restrictive.

4. The appellant's appeal submissions also centre on whether any restriction on the occupancy of the dwelling is necessary.
5. The Council argue that removal of condition 5 relating to occupancy of the dwelling goes to the heart of the permission and that as a result, I should look at the whole permission afresh. However, planning permission was granted by the Council for the erection of a dwellinghouse subject to an occupancy condition. The appellant has not made an appeal directly against the imposition of the condition under s78(1)(a) of the Town and Country Planning Act 1990 (the Act) which contains powers for an Inspector to consider the matter afresh. The appeal has been made under s73 of the Act and the original permission will continue to exist whatever the outcome of the appeal. In addition, the removal of the occupancy would not lead to conflict with the original description of development. I have therefore confined my consideration of the appeal to condition 5.
6. As such, the main issue therefore is whether the condition is reasonable and necessary to ensure the Council's objectives of protecting the character of the area and directing housing development to locations which reduce the need to travel, are met.

Reasons

7. The Planning Practice Guidance (PPG) advises that it is 'rarely appropriate' to limit the benefits of a planning permission to a particular person or group but acknowledges that there may be exceptional occasions where this may be justified. In granting planning permission for the dwelling, the Council say that the appellant and his family had very special and specific health and disability needs. These, they say, were exceptional circumstances that did not apply to other families that had disabled family members and as such, a personal condition was justified. I understand that reserved matters consent has subsequently been granted for the dwelling but I have not been provided with copies of the approved plans for the dwelling indicating how the layout has been designed to specifically meet the particular health and disability requirements of the appellant and their family.
8. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects.
9. The condition allows the appellant and their family to reside in the dwelling but it does not say what should happen to the dwelling once that occupancy ceases. There will inevitably be a point in the future when the dwelling can no longer be occupied by the appellant and their family. The condition does not require the demolition of the property and a return to the site's former appearance. As such, the result would be that the dwelling must sit vacant and unoccupied as the condition does not allow for occupancy by anyone else.

10. The Framework promotes the effective use of land in meeting a need for homes. Paragraph 120 d) supports the development of under-utilised land and buildings and encourages efforts to identify and bring empty homes back into residential use. Irrespective of the problems the appellant claims to have encountered in terms of raising finance with the condition in place, I find that condition 5 would lead to a permanent building being left unnecessarily vacant and this runs contrary to the Framework. As such, I conclude that the condition is unreasonable.
11. It follows therefore that I must consider whether it is appropriate to vary the condition or remove it all together. The result of either would be that the property could be occupied as residential accommodation for its lifetime.
12. There is no dispute between the parties that the site lies outside an established settlement limit, within the open countryside. My attention has been drawn to policy SA2 of the Sites and Policies Plan, Part 2 Site Allocations Plan 2006-2026, adopted April 2018 (SAP) but as this relates to extensions to residential curtilages, I do not find this directly relevant to the appeal proposal. Policy CS14 of the North Somerset Core Strategy adopted January 2017 (CS) sets out a hierarchy for the distribution of new housing across the district with a focus on the main towns and development outside settlement limits being limited to allocated sites and where it accords with other relevant settlement policies. To this end, Policy CS33 restricts new dwellings to those which are replacement dwellings, residential subdivision, residential conversion and dwellings essential for rural workers with the aim of protecting the character of the rural area and preventing unsustainable development.
13. However, the appeal does not involve the provision of a new dwelling. Planning permission has already been granted at the site for a dwelling and I saw at my site visit that works to erect the dwelling have commenced. The Council have not suggested to me that removal of the occupancy condition would harm the character of the rural area and I am satisfied that the effect would be a neutral one.
14. Once complete, the dwelling would be occupied by a family with a need to access shops, services and local facilities. Policy CS1 of the CS seeks to encourage development in locations which benefit from sustainable transport modes. The Council argue that the site is poorly located in terms of access to shops and services and that this will lead to a reliance on the private car for most journeys.
15. Even if I agreed with the Council's position, I have been provided with no evidence to suggest that the trips made by the appellant and his family differ in any way from another family or indeed that the mode of transport used by the appellant and his family would differ from other families. In short, I see no difference in the way that the residential dwelling would be occupied and type of trips likely to be generated as a result of whoever occupied it. As such, I am satisfied that removing condition 5 would have a neutral effect on the Council's strategy of encouraging a shift towards sustainable transport modes.
16. I conclude therefore that the removal of the occupancy condition would not conflict with Policies CS1, CS14 and CS33 of the CS which seek to protect the character of the area and direct housing development to locations which reduce the need to travel, given that there is an extant permission for a dwelling on the appeal site.

Other Matters

17. Interested parties have raised the issue of land ownership and that the appellant does not in fact own the appeal site. The Council have confirmed that the correct ownership certificates have been signed at each stage and that the appellant served notice on the landowner. Given my findings in respect of the main issue, the matter of land ownership is not one on which my decision turns.

Conditions

18. The guidance in the Planning Practice Guidance makes it clear that decisions under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. Accordingly, I have reimposed the previous conditions with the exception of the time limit which I have restricted to three years from the original permission date and condition 5 which I have deleted in its entirety. Accordingly, I have renumbered the conditions from condition 5 (inclusive) onwards. In the event that any of the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
19. I have removed the word 'strict' from conditions previously numbered 7, 8, 9 and 16 (and now numbered 6, 7, 8 and 15) to ensure that the conditions are precise. These amendments do not change the overall aims of the affected conditions.
20. The Council have requested an amendment to condition 14 (now 13) to increase the renewable energy requirement from 10% to 19% and an additional condition requiring a 19% improvement on Part L of the Building Regulations. However, given that the substance of the appeal relates to an occupancy condition and that construction has already commenced on site, I do not consider that it would be reasonable to either amend condition 13 or impose an additional condition.

Conclusion

21. 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

Schedule of Conditions

1) Approval of the details of the access, layout, scale, appearance of the buildings, parking and the landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority, in writing before any development is commenced.

2) Application for approval of the reserved matters shall be made to the Local Planning Authority before 14 August 2023.

3) The development hereby permitted shall be begun before the expiry of two 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 the following approved plans and documents:

Drawing no. LP001: Site location plan

Drawing no. EP004-Rev A: Existing site plan

Drawing no. PP005-Rev A: Proposed site plan

Planning Statement

Bat Activity Survey and Mitigation Strategy, prepared by EcoLogic, Report ref: 17 0729-19 rev00, report dated October 2019

5) The dwelling hereby permitted shall be constructed to accessibility standards that are sufficient to meet the needs of the future occupants that have differing needs and disabilities, as well as being constructed to allow adaptation of the dwelling to meet the changing needs of the occupants over time. The dwelling shall not be occupied until the accommodation meets the standards contained in the Building Regulations 2010, Approved Document Part M 'Access to and use of dwellings': M4(2) 'Accessible and adaptable dwellings'.

6) The construction of the permitted dwelling shall be carried out only in accordance with the requirements of self-build and custom housebuilding and shall be registered as such with the local authority as required under the Self-Build and Custom Housebuilding Act 2015 as amended by the Housing and Planning Act 2016.

7) The details submitted under condition 1 of this permission shall include full details of the floor levels, to avoid the risk of flooding, and roof ridge heights to be used in the building works for the dwelling hereby permitted. Once these details are approved the development shall be carried out in accordance with the approved plans. If any other levels and heights are proposed no development shall take place until such has been approved, in writing, by the Local Planning Authority.

8) The details submitted under condition 1 of this permission shall include the external walling and roofing materials to be used in the building works for the dwelling hereby permitted. Once these details are approved the development shall be carried out in accordance with the approved plans. If any other material is proposed no development shall take place until such has been approved, in writing, by the Local Planning Authority.

9) The details submitted under condition 1 of this permission shall include plans showing the access, parking area and turning area within the site and provision of

an electric vehicle (EV) charge point for the dwelling hereby approved and details of the surfacings. The approved access, parking area and turning area shall be properly consolidated and surfaced and the EV charge point installed in accordance with the approved details before the dwelling is occupied and shall thereafter be permanently retained and shall not be used except for the parking of vehicles in connection with the dwelling hereby permitted.

10) The details submitted under condition 1 of this permission shall include plans of the retained boundary trees and hedges, landscaping and boundary treatments for the development including an ecological landscape management plan and details of the orchard planting shown on Drawing no.PP005-Rev A, and once approved all works should be carried out in accordance with the approved plans during the months of October to March inclusive following occupation of the building or completion of the development, whichever is the sooner.

11) Trees and hedges shown in the landscaping scheme to be retained or planted which, during the development works or a period of ten years following full implementation of the landscaping scheme, are removed without prior written consent from the Local Planning Authority or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Authority may specify.

12) The details submitted under condition 1 of this permission shall include plans showing details of foul and surface water drainage together with a programme of implementation for the dwelling. Such works shall be carried out in accordance with the approved details, prior to the occupation of the dwelling.

13) The details submitted under condition 1 of this permission shall include plans showing measures to generate 10% (less if agreed with the local planning authority) of the energy required by the use of the development (measured in carbon) through the use of micro renewable or low carbon technologies. Once approved the dwelling hereby permitted shall not be occupied until such measures have been installed on site and are fully operational in accordance with those details. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.

14) The details submitted under condition 1 of this permission shall include plans showing a scheme for providing space and facilities for the storage and collection of domestic waste. Once approved the dwelling shall not be occupied until the approved scheme has been implemented. Thereafter the approved space and facilities for the storage and collection of waste shall be permanently retained unless otherwise agreed in writing with the Local Planning Authority.

15) The works shall be carried out in accordance with the recommendations and mitigation measures in the Bat Activity Survey and Mitigation Strategy, prepared by EcoLogic, Report ref: 17 0729-19 rev00, report dated October 2019

16) Details of any external lighting and illumination shall be submitted to and approved, in writing, by the Local Planning Authority before the dwelling is occupied. No means of external illumination shall be installed other than in accordance with the approved details and shall not be varied without the permission in writing of the Local Planning Authority.

17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order

revoking and re-enacting that Order, with or without modification), no garage, shed or other structure shall be erected within the curtilage of the dwelling hereby permitted (other than any expressly authorised at the Reserved Matters Stage).

18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), no windows, rooflights or dormers (other than any expressly authorised at Reserved Matters Stage) shall be inserted in the west, north and east elevations of the new dwelling without the prior written consent of the Local Planning Authority.

19) The height of the proposed west side elevation of the dwelling shall not exceed single-storey height within 12 metres of the adjoining property of 'Eastlands', Jubilee Lane and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), there shall be no increase in height over that authorised at Reserved Matters Stage on the west side of the new dwelling without the prior written consent of the Local Planning Authority.

End of conditions