
Appeal Decision

Site visit made on 18 October 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/W3330/W/22/3294639

Birch Cottage, Halse Road, Halse, Taunton TA4 3AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr P Fineberg against the decision of Somerset West and Taunton Council.
 - The application Ref 18/21/0017, dated 5 November 2021, was refused by notice dated 8 February 2022.
 - The application sought planning permission for a replacement of a single dwelling and garage with 1 No detached dwelling with detached garage and associated works and extension of residential curtilage without complying with a condition attached to planning permission Ref 18/20/0014, dated 26 October 2020.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans:
 - (A3)DrNo:2020018 001 Rev A Location and Block Plan
 - (A3)DrNo:2020018 003 Rev A Existing and Proposed Site Plan Layouts and Proposed Garage
 - (A3)DrNo:2020018 004 Rev A Floor Plans & Long Sections
 - (A3)DrNo:2020018 005 Rev A Proposed Elevations
 - (A3)DrNo:2020018 006 Rev B Existing and Proposed Streetscene.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of a single storey dwelling and garage with 1 No detached dwelling with detached garage and associated works and extension of residential curtilage, at Birch Cottage, Halse Road, Halse, Taunton TA4 3AQ in accordance with application Ref: 18/21/0017 made on the 5 November 2021 without complying with condition No 2 set out in planning permission Ref: 18/20/0014 granted on the 26 October 2020 by the Somerset West and Taunton Council, but otherwise subject to the conditions set out within Schedule below.

Procedural Matters

2. The appeal site is within the Halse Conservation Area and so I have had special regard to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

3. At the time of my visit the house had been constructed and the residential curtilage had been extended, although the proposed garage had not been erected. For the avoidance of doubt, my determination of the appeal is based on the drawings as submitted.

Application for Costs

4. An application for costs was made by Mr P Fineberg against Somerset West and Taunton Council. This application is the subject of a separate decision.

Main Issues

5. The main issues are firstly, the effect that varying Condition 2 would have on the living conditions of neighbouring residents, having particular regard to privacy; and secondly, whether varying the condition would preserve or enhance the character or appearance of Halse Conservation Area.

Reasons

Living Conditions

6. Positioned upon a gently sloping site, the replacement dwelling has been constructed to be set back from the public highway behind a gravelled parking area. The house is near to the western boundary of the plot, part of which comprises the flank wall of the neighbouring property, Willow Cottage. The new house has been set down into the hillside, with garden retaining walls to the west and south. Along much of the western garden boundary is a high stone wall.
7. The upper floor of the house comprises bedrooms, a family bathroom and ensembles. The windows of the bathrooms and ensembles are obscure glazed. The first floor windows closest to Willow Cottage serve a bedroom, and are inserted under pitched roof dormers. There are neither upper floor windows nor roof lights in the western elevation of the house. Given this and the positioning of the house in relation to Willow Cottage, the oblique relationship of the nearest window is such that very little overlooking into the upper floor windows of the neighbouring house can occur. When looking out from the front facing bedroom windows, future occupiers would see the flank wall of the adjoining property rather than have any direct view into the rear windows or garden of Willow Cottage.
8. As regards the views from the upper floor rear windows, future occupiers would have oblique views of the rear garden of Willow Cottage. However, part of the appeal site has been levelled to accommodate the house, and this along with the presence of the tall garden boundary wall serves to minimise the degree of overlooking that occurs. Furthermore, whilst the original dwelling was single storey, it was positioned further back into the plot, at a higher level

than the ground floor of the new dwelling. As to be expected within residential areas, there would be a degree of mutual overlooking occurring. Nevertheless, future occupiers would not be able to look directly into any of the windows of Willow Cottage. There would be some views into the rear garden, but such views would be from the upper floor only, and at an oblique angle and from some distance away.

9. Moreover, the position of the new house along with the absence of first floor windows and rooflights in the west facing elevation is such that future occupiers would not be able to overlook the patio or single storey rear extension of Willow Cottage. The separation that exists between the two houses is such that they do not appear unduly cramped, and this along with the appeal property being at a lower level does not create an overbearing outlook for the occupiers of Willow Cottage.
10. Given my findings, the dwelling would not significantly harm the living conditions of nearby residents. The proposal would accord with the requirements of Policy DM1 of the Taunton Deane Core Strategy (2012) (CS), which seeks amongst other things, that development would not unacceptably harm the amenity of individual dwellings, thereby reflecting objectives of the National Planning Policy Framework (the Framework).

Character and Appearance

11. The appeal property occupies an edge of village position, surrounded to the east and south by orchards and paddocks. The house is at a lower level than the majority of the village, which comprises many historic buildings that front the highway. The close positioning of these buildings to the highway creates a defined enclosure to the public realm, and this contrasts the more spacious set back of the houses that occurs on the outskirts of the village. This distinction is part of the significance of the conservation area, as is the repeated use of the attractively warm coloured red stone, including for garden walls and outbuildings.
12. The house has been set back from the highway, behind a parking and turning area, and this positioning would contribute to the spacious, loose knit relationship of dwellings to the public highway that characterises this part of the village. The proposed garage would be positioned close to the north-eastern corner of the appeal site, set back from the road behind the existing mixed native hedgerow that is growing along the verge. The garage would occupy a similar position and have a similar orientation to the one that was originally present on the site. Although the garage would be set slightly forward of the house, it would not project beyond the flank wall of Willow Cottage,

and as such would maintain the spacious relationship and appearance of the house and garage with the highway.

13. The garage would have timber clad walls with no windows or openings to the sides and rear elevations. The opening would front the flank wall of the neighbouring property, creating a physically subservient, and legibly functional ancillary relationship to the host dwelling. The orientation of the garage would also create a defined edge to the property, with the proposed hedge planting maintaining the verdant boundary treatment that is a feature of the road verges and nearby fields. Whilst stone is a common material within the village, there are also timber outbuildings and fences in nearby properties. The roof would be plain tiles, and these would harmonise with the dwelling. Moreover, there are a great variety of traditional roofing materials present in nearby buildings, including various forms of clay tiles. Consequently, the use of plain tiles upon the garage would both reflect and harmonise with this element of the conservation area.
14. For these reasons the garage would preserve and enhance the character and appearance of the conservation area, thereby according with CS Policies DM1 and CP8. These seek, amongst other things, that development conserves and enhances the historic environment, and that settlements and street scenes will not be unacceptably harmed, reflecting objectives of the Framework.

Other Matters

15. The appeal site is within the catchment that flows into the Somerset Levels and Moors Ramsar, an internationally important wetland. The interest features of the Ramsar are considered unfavourable through the effects of excessive phosphates. Nutrients entering into the catchment, including that deriving from a single dwelling, would increase phosphate levels to the detriment of the integrity of the Ramsar. Natural England advises that Appropriate Assessments are undertaken of planning applications that will result in additional residential units and an increase in population served by a wastewater system. The Conservation of Habitats and Species Regulations (2017) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes. The AA needs to establish that the effects of the proposal, including in combination with other development, does not impact upon the integrity of the protected site. This responsibility falls to me in the context of this appeal.
16. In this instance the proposal seeks the revised positioning of a replacement dwelling that was originally permitted by the Council in 2020. The original dwelling has been demolished and the replacement was erected in March 2021. The appellant has confirmed that the former dwelling and outbuilding had a main bathroom, and also two

additional cloakrooms with washing facilities. The development would not increase the number of dwellings on the site, nor could the original permission be implemented. Furthermore, the appeal scheme would not increase the living accommodation that was originally permitted by the Council.

17. Natural England has been consulted on this specific case and are of the view that because the proposal is for a replacement dwelling, the scheme would not have a likely significant effect upon the Ramsar. Having regard to this view and the particular individual circumstances of this case, I am satisfied that there would be no adverse effect on the integrity of the Ramsar, either alone or in combination with other projects.
18. Concerns regarding the Council's handling of the application, including enforcement action, relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Conditions

19. The conditions attached to the original permission and those suggested by the Council have been considered against paragraph 56 of the Framework. Where necessary and in the interests of clarity and precision they have been altered to better reflect these requirements.
20. In addition, the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73A should restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
21. As the development has started I have not imposed a condition regarding the time limit for the commencement of development. The plans condition has been altered to refer to the drawings relevant to the appeal so as to provide certainty and avoid doubt. Conditions have been imposed requiring details of the materials to be used in the external surfaces of the buildings to ensure that the development harmonises with the character and appearance of the conservation area. To achieve a similar aim, landscaping, tree and hedgerow conditions have been imposed. Conditions seeking to enhance and protect wildlife biodiversity have also been attached.
22. The Council has suggested a condition regarding vegetation clearance measures. At my site visit it was apparent that these works had already occurred, with the gardens and parking areas having already been created. In light of this, I have not imposed this condition.

23. For the appeal scheme the Council has suggested additional conditions regarding the removal of permitted development rights for extensions and alterations, and to keep the parking spaces in the garage free of obstruction. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The dwelling is within a conservation area and this by itself imposes limitations on the alterations and extensions that can occur under permitted development rights. Having regard to this, and the circumstances in this case, I do not find the suggested condition necessary to make the development acceptable.
24. Turning now to the suggested parking condition, the submitted plans show a generous turning and parking area in front of the house and garage. Given this, I do not find the suggested condition necessary.

Conclusion

25. Thus, for the reasons given above and having considered all other matters raised, the appeal is allowed.

J J Evans

INSPECTOR

SCHEDULE

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Dr No: 2020018 001 As Built, Location & Block Plan
 - Dr No: 2020018 003 As Built – Rev A, Pre-build layout / as built position of dwelling house
 - Dr No: 2020018 004 As Built, Proposed floor plans & long section and two bay oak frame garage
 - Dr No: 2020018 005 As Built, Proposed Elevations
 - Dr No: 2020018 006 As Built, Existing & Proposed Streetscene
- 2) The landscaping / planting scheme shown on the submitted plans shall be completely carried out within the first available planting season from the date of commencement of the development. For a period of five years after the completion of the development, the trees and shrubs shall be protected and maintained in a healthy weed free condition and any trees or shrubs that cease to grow shall be replaced by trees or shrubs of similar size and species or other appropriate trees or shrubs as may be approved in writing by the Local Planning Authority.
- 3) Prior to the construction of the dwelling and garage, details of the building materials to be used in external walls of the house and garage shall be submitted to and approved in writing by the Local Planning Authority. Such information shall include details of the stone the colour and texture of the render. The development shall be completed in accordance with the approved details and thereafter maintained as such.
- 4) 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 agreed 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 without prior consent from the Local Planning Authority.

- 5) 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 for active birds' nests immediately before the vegetation is cleared and provides 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 and details should be submitted to and agreed by the Local Planning Authority, and the works should take place in accordance with the approved details. In no circumstances should netting be used to exclude nesting birds.
- 6) The large glazed areas on the south elevations of the dwelling shall be bird-friendly. A written specification for the glazing will be submitted to and approved in writing by the Local Planning Authority prior to construction of the dwelling. The approved glazing will be installed strictly in accordance with the specifications and shall be maintained thereafter in accordance with the approved design. Under no circumstances should any other type of glazing be installed without prior consent in writing from the Local Planning Authority.
- 7) The following will be integrated into the design of the dwelling:
 - a) A Habitat 001 bat box or similar will be built into the structure at least four metres above ground level and away from windows of the west elevation.
 - b) A bee brick built into the wall about 1 metre above ground level on the south or southeast elevation of the dwelling.Photographs of the installed features will be submitted to the Local Planning Authority prior to the first occupation of the dwelling.
- 8) The birch trees on site shall be retained and protected during the build in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction, and should not be pruned without consent.

******END OF SCHEDULE******