



Appeal Decision

Site visit made on 24 January 2023

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2023

Appeal Ref: APP/D0121/W/22/3307191

Max House Farm, Max Mill Lane, Winscombe BS25 1DS

- 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 Mrs Nicole Garrett against the decision of North Somerset Council.
 - The application Ref 22/P/1547/MMA, dated 23 June 2022, was refused by notice dated 13 September 2022.
 - The application sought planning permission the demolition of existing dwelling and coach house, construction of replacement dwelling with associated works including landscaping and alterations to existing cowshed. without complying with condition 2 attached to planning permission Ref 21/P/1189/FUL, dated 17 April 2021.
 - 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 and documents: Drawing no. Sheet 1: Existing site plan, Drawing nos. Sheet 2: Proposed site plan (excluding roof profiles on house), Sheet 3: Existing elevations, Sheet 4 - Rev F: Proposed elevations, dated November 2021, Sheet 5 - Rev F: Existing and proposed floor plans, dated November 2021, Sheet 6: Existing and proposed floor plans and elevations for the cowshed and greenhouse, Sheet 8 - Rev A: Location plan, Design, Access and Heritage Statement (except plans and visuals of proposed dwelling), Historic Survey prepared by Kirsten Elliot, Historic Home Research, dated October 2019 House Inspection Report, prepared by Innes Wilkin Architecture, dated January 2019 Energy and sustainable statement Preliminary Ecological Appraisal, prepared by Landmark Practice, dated October 2021, Bat Survey Report, prepared by Landmark Practice, dated October 2021.
 - 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 demolition of existing dwelling and coach house, construction of replacement dwelling with associated works including landscaping and alterations to existing cowshed at Max House Farm, Max Mill Lane, Winscombe BS25 1DS in accordance with the application, Ref 22/P/1547/MMA, dated 23 June 2022, without complying with condition 2 previously imposed on Ref 21/P/1189/FUL, dated 17 April 2021, and subject to the conditions set out in the attached schedule.

Background and Main Issues

2. Application Ref 21/P/1189/FUL was submitted seeking planning permission for the demolition of an existing dwelling and coach house, construction of replacement dwelling with associated works including landscaping and alterations to existing cowshed. The scheme was approved, which is hereafter referred to as the 'approved scheme', detailed on the submitted plans references Drawing no.

Sheet 2- Rev B Proposed site plan, Sheet 4- Rev G: Proposed elevations, Sheet 5- Rev G: Existing and proposed floor plans.

3. Since the 2021 approval, an application for a marginal increase in footprint and height of proposed building have been submitted and agreed¹. This matter has been raised with both main parties and they have had an opportunity to provide their views in respect of the matter. The appellant has indicated that due to the timing of appeal, the minor changes agreed by the Council in 2022 are not shown on the proposed plans submitted with the appeal.
4. Consequently, since the approved variations are not shown I have based my decision on the changes submitted with the appeal and shown on the proposed plans drawings 'Sheet 2 Revision C- Proposed site plan', 'Sheet 4 Revision H Proposed elevations', 'Sheet 5 Revision H Existing and proposed floor plans'. This includes window changes, roof tiles from slate to red style clay and an increase in wall thickness. I have hereafter referred to this as the 'proposed development'. The Council does not contest the changes to the roof tiles and wall thickness, but objects to the window change. I have considered the appeal on this basis.
5. In view of the above, the main issue is the effect of the proposed development on the character and appearance of the area, including the conservation and enhancement of the landscape and scenic beauty of the Mendip Hills Area of Outstanding Natural Beauty (AONB).

Reasons

6. The proposed site is a spacious plot in the countryside, surrounded by fields and woodland. It is in an area of scattered farms and dwellings outside of the Winscombe settlement boundary and within the Mendip Hills AONB. At the time of my site visit, the existing dwelling had been demolished and works were on going. The site is accessed off a narrow road known as Max Mill Lane, with the dwellings within the vicinity being mostly detached properties within good sized plots in a variety of scale, sizes and styles.
7. I acknowledge that the building being replaced was a Non-Designated Heritage Asset (NDHA), and the window design was important to the approval of the replacement dwelling. However, there is limited evidence before me to indicate that the window openings, their design, style, proportions, and symmetry was part of the significance of the NDHA. The Council's main contention is that the incorporation of the upper glazing bars across all the windows in the replacement dwelling was an important feature as it provided an order, balance, repetition, and symmetry that improved the overall design. Consequently, the proposed change to window design would result in a poorer design quality to the whole property.
8. I have had regard to Council's position, but the materials of the proposed windows, their size, the number of openings and position would be the very similar to the 'approved development.' The proposed development windows are repeated across the elevations, ensuring consistency in the materials, the position of the openings as well as the shape and design of the windows. Although the glazing bars across the top of some windows would be altered, those that are changed would remain balanced and symmetrical across their width. The replacement dwelling is also set back from Max Mill Lane, limiting

¹ Council references 22/P/2468/MMA

views of the proposed development from wider public vantage points. The proposed development would be visible from the public footpath to the north, but at a distance. The distance along with the nature of the change to the windows would have limited impact on the overall character and appearance of the replacement dwelling, the wider area, and its setting within the AONB.

9. My attention has been drawn to examples of a range of windows in the area by the appellant and nearby example at 'Watersmeat' by the Council. Based on the evidence before me and from what I saw on site, I am of the view that there is a variety of sizes as well as styles of windows in the area. This variation provides flexibility to the type of window that can be proposed without having a detrimental impact upon the established character and appearance of the area.
10. Consequently, the proposed development would not have a detrimental impact upon the character and appearance of the host property, or the wider area and its setting within AONB. The proposed development would be compliant with the aims and objectives of Policies CS5 and CS12 of the North Somerset Core Strategy 2017 and Policies DM7 and DM32 of the North Somerset Sites and Policies Plan 2016 (Part 1), which amongst other things, require proposal to be high-quality in design and protect the character, distinctiveness and quality of the landscape and townscape, as well as the conservation and enhancement the natural beauty of the AONB.
11. In coming to this conclusion, I have had regard to Paragraph 176 of the National Planning Policy Framework (the Framework), which sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB's, which have the highest status of protection.

Other Matters

12. I have had regard to the concerns that the quality of approved development is being materially diminished. This is a Section 73 appeal to vary the permission of the approved development. Consequently, the approval of the proposed development would not supersede the approved development but create two separate planning permissions. As such, allowing this appeal would not diminish the quality of the approved development.
13. The advice and guidance from Historic England- Traditional Windows, and the Quality reviewer: 'Appraising the Design Quality of Development Proposals' are noted. I do not disagree that the position of window openings, their design, symmetry and finishing material are important factors when considering the acceptability of a proposal. However, for the reasons set out above, I do not consider that the windows proposed in this instance would have a harmful impact upon the character and appearance of the replacement dwelling or the wider area.

Conditions

14. As I have concluded that the proposed development would be acceptable in respect of character and appearance, it would be necessary to remove condition 2 of the 2021 permission and replace it with a condition detailing the plans approved. This is to ensure that the proposed development is carried out in accordance with the approved details.
15. Some minor changes to the approved development have been permitted by the Council, but due to the timing they are not detailed on the proposed plans

submitted with the appeal. Although a condition has been suggested by the Council, a condition detailing conflicting elevation plans would fail the tests of being precise and enforceable. As such, the condition has not been varied in this manner and the plans condition will reference those submitted with the appeal. It will be for the appellant and the Council to determine if these matters need to be resolved formally.

16. Although works on site have commenced by the demolition of the existing building, there is no indication what approved scheme the appellant is implementing. As such, the time period for implementation has been reapplied. An application to vary the wording of conditions 9 and 10² and an application to discharge an archaeological watching brief (originally condition 17)³ have been agreed since the original approval. These conditions been varied to accord with the approved details.
17. The remaining conditions were not in contention, but I have considered them in the light of advice in the National Planning Practice Guidance (the PPG) and, in the interests of clarity and precision, I have amended some of the wording.

Conclusion

18. I accept that allowing the appeal would effectively revert to a window design which has been amended through negotiation. However, as reasoned above, given the nature of the proposal and its surroundings, I have determined that the proposed development would be acceptable.
19. Consequently, I find that the disputed condition is not reasonable or necessary in the interests of the character and appearance of the area, including the conservation and enhancement of the landscape and scenic beauty of the AONB. I conclude that planning permission should be allowed, and the condition varied as set out in the schedule of conditions below.

M. P. Howell

INSPECTOR

² Council reference 22/P/1134/FUL

³ Council reference 22/P/0358/AOC

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the 16 December 2024.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Drawing no. Sheet 1: Existing site plan

Drawing no. Sheet 3: Existing elevations

Drawing no. Sheet 6: Existing and proposed floor plans and elevations for the cowshed and greenhouse

Drawing no. Sheet 8 - Rev A: Location plan

Design, Access and Heritage Statement (except plans and visuals of proposed dwelling)

Historic Survey prepared by Kirsten Elliot, Historic Home Research, dated October 2019

House Inspection Report, prepared by Innes Wilkin Architecture, dated January 2019

Energy and sustainable statement

Preliminary Ecological Appraisal, prepared by Landmark Practice, dated October 2021

Bat Survey Report, prepared by Landmark Practice, dated October 2021

Drawing no. Sheet 2 Revision C- Proposed site plan

Drawing no. Sheet 4 Revision H Proposed elevations

Drawing no. Sheet 5 Revision H Existing and proposed floor plans

- 3) The materials to be used in the development hereby permitted shall be in complete accordance with the approved plans and specifications unless details of any alternative material have first been submitted to and approved, in writing, by the Local Planning Authority.
- 4) The replacement dwelling hereby permitted shall not be brought into use until a parking area has been provided in accordance with the approved plans and specifications. The approved parking area shall be properly consolidated and surfaced, and the parking spaces laid out before the dwelling is occupied. The parking area shall only be used for the parking of vehicles in connection with the dwelling hereby permitted.
- 5) The dwelling hereby permitted shall not be occupied until a suitable level of Electric Vehicle (EV) charging provision has been installed in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. The approved Electric Vehicle (EV) charging provision shall thereafter be permanently retained.
- 6) The development shall not take place except in strict accordance with the measures outlined in Preliminary Ecological Appraisal, prepared by Landmark Practice, dated October 2021 and the Bat Survey Report, prepared by Landmark Practice, dated October 2021. If amendments to the methodology are required, details of the changes must be submitted in writing and agreed by the Local Planning Authority before relevant works proceed. The development shall then be implemented in accordance with the agreed changes.

- 7) Prior to the demolition of the existing house and buildings on the site, the works to the cowshed shall be carried out in strict accordance with the approved plans and shall be fully completed and fully useable as a bat roost, and it shall be retained as a bat roost permanently.
- 8) No means of external lighting shall be installed on the site unless details have first been submitted to and approved, in writing, by the Local Planning Authority. The external lighting shall be carried out in accordance with approved details.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and reenacting the Order, with or without modification), no extensions, no external alterations to windows or roofing materials to the replacement dwelling shall be carried out without the permission, in writing, of the Local Planning Authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and reenacting the Order, with or without modification), other than within the existing walled garden area to the west of the replacement dwelling, no outbuildings, shall be erected within the curtilage of the replacement dwelling hereby permitted unless expressly authorised by this permission.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and reenacting that Order, with or without modification), the garage and cowshed hereby permitted shall not be converted to living accommodation without the prior written permission of the Local Planning Authority.
- 12) All works comprised in the approved details of landscaping shall be carried out in during the months of October to March inclusive following occupation of the building or completion of the development, whichever is the sooner. Any trees or plants which within a period of 10 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.
- 13) The development hereby permitted shall not be occupied until measures to generate 19% (less if agreed with the local planning authority) of the energy required by the use of the development (measured in kilowatt hours - KWh) through the use of micro renewable or low carbon technologies have been installed on site and are fully operational in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. The approved measures shall be carried out in accordance with the approved scheme and permanently retained thereafter.
- 14) The new replacement dwelling shall not be occupied until space and facilities for the separate storage and collection of waste and recycling materials have been provided in accordance with plans and specifications that have first been submitted to and approved, in writing, by the Local Planning Authority. The approved space and facilities shall thereafter be made permanently available for the storage and collection of waste and recycling materials for the occupiers of the new replacement dwelling.

- 15) The scheme shall be carried out in accordance with the Written Scheme of Investigation for an Archaeological Watching Brief prepared by Avon Archaeology Limited, dated January 2022, and agreed as part of 22/P/0358.