



Appeal Decision

Hearing held on 19 September 2023

Site visit made on 19 September 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal Ref: APP/Q3305/W/23/3323827

Land accessed of Bindon Lane, Witham Friary, Frome

- 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 Mr and Mrs Pritchard against the decision of Mendip District Council.
 - The application Ref 2021/1430/FUL, dated 15 June 2021, was refused by notice dated 15 December 2022.
 - The development proposed is change of use from Agricultural to Equestrian for the relocation of an existing Riding School business. Construction of Menage, 2 'American barns' associated parking, paths, muck heap & hard standing. Also installation of a mobile home to be occupied by the owners in association with the business.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellants. This application is the subject of a separate decision.

Preliminary Matters

3. Mendip District Council has now merged with other councils in Somerset to form Somerset Council. However, the development plan for the area formally covered by the District Council remains in place until such time as it is revoked or replaced. I have determined the appeal on this basis.
4. While not a reason for refusal, matters of highway safety have been raised by interested parties. The appellants have had opportunity to comment on this issue prior to, and at the Hearing.
5. During the appeal process and following the submission of appeal statements, the appellant has submitted amended plans in relation to highway access. They suggest that this information should be considered in the appeal decision to address third parties concerns in relation to highway safety. Further late evidence was submitted within and immediately after the hearing which were discussed at the event.
6. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. The change within the plans relate to the existing access and the incorporation of a lockable gate. Notwithstanding the Council's engagement

with the plans, I note the concerns of interested parties of a lack of opportunity to fully respond to these plans prior to the Hearing. Due to the extent and nature of the change fundamentally amending the proposed access solution in relation to the proposed blocking up of the existing access, and in the interests of fairness I consider that parties may be prejudiced if I take this information into account. As all parties were informed at the Hearing, I have therefore assessed this appeal on the highway access plans that formed the basis of the Council's decision.

7. Other late documents were submitted during and directly after the Hearing (as detailed at the bottom of this decision letter). Given that these documents do not fundamentally alter the proposal and the relevance to discussions between all parties at the Hearing, I have taken these particular documents into consideration in my decision.

Main Issues

8. The main issues are:

- Whether there is an essential need for a rural worker to live permanently at the appeal site;
- The effect of the proposal on the character and appearance of the area; and
- The effect of the proposal on highway safety.

Reasons

Essential Need

9. The appeal site lies outside of any recognised development boundary. In such locations Core Policy 1: Mendip Spatial Strategy of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (adopted 15 December 2014) (LP) states that development will be strictly controlled but may exceptionally be permitted in line with the provisions set out in Core Policy 4: Sustaining Rural Communities. This Policy supports occupational dwellings in rural locations, where there is a proven and essential functional need to support agricultural, forestry and other rural-based enterprises.
10. In this respect, LP Policy DP13 supports proposals for permanent or temporary accommodation in open countryside locations which are necessary to support rural enterprises subject to certain criteria. Amongst other things, this criterion includes that it can be demonstrated that the dwelling and its proposed location are essential to support or sustain the functioning of the enterprise; there is a need for permanent occupation which relates to a full-time worker or one who is primarily employed by the business; and all alternative accommodation options have been explored and no satisfactory alternative means of providing accommodation has been identified.
11. LP Policy DP13 also supports the grant of temporary permission for a 3-year period for new rural enterprises, where clear evidence, through a business plan or other assessable proposal, shows a firm intention and ability to develop the enterprise on a sound financial basis.
12. Paragraph 80 of the National Planning Policy Framework (Framework) seeks to avoid isolated homes in the countryside unless one or more circumstances apply, including where there is an essential need for a rural worker to live

permanently at or near their place of work in the countryside. The Planning Practice Guidance (PPG) outlines how the need of isolated homes in the countryside for essential rural workers can be assessed including evidence of the necessity for a rural worker to live at, or in close proximity to, their place of work to ensure the effective operation of an enterprise; the degree to which there is confidence that the enterprise will remain viable for the foreseeable future; and in the case of new enterprises, whether it is appropriate to consider granting permission for a temporary dwelling for a trial period.

13. The appellants currently operate a riding school from rented land elsewhere. I heard from Mrs Pritchard at the Hearing that the riding school has successfully been operating for some 11 years and provides a range of equine related activities including riding lessons, hacks and camps to a broad range of customers including adults and children.
14. At the time of the application the submission indicates the business had 13 horses and ponies, although a Business Appraisal (BA) by Ian Judd & Partners submitted with the appeal indicates 9 horses and ponies. At the Hearing I was advised by the appellants that this number is actually 12 horses and ponies, with the additional horse being retired from the enterprise, but retained by the appellants. The BA also outlines the labour requirement of the enterprise, being 2.44 full-time employees, which is not refuted by the Council.
15. The appellants indicate that the supervision of the horses and ponies and their care, safety and welfare, as well as site security cannot be undertaken whilst living remotely from the site resulting in an on-site presence at all times being essential. It is put to me that such examples of incidents include colic, horses becoming cast, injuries suffered in the fields, and horses escaping. At the Hearing I heard from the appellant's veterinary surgeon, Mr Francis, who has considerable experience in equine care.
16. Mr Francis outlined that the welfare of horses is paramount and there are a number of differing reasons why a vet is called to a site including those described above. Mr Francis noted how living on the site would clearly benefit the welfare of the animals and how in such circumstances such as colic, which Mr Francis stated could be mild to fatal, it is better to be on site to provide quick reaction and ongoing care.
17. However, it is not unusual for horses to be unsupervised in locations that do not have a permanent dwelling on site. I accept that there may be situations where horses need a quick response in order to alleviate, minimise or remove risk of injury arising through illness or accident. This is corroborated by Mr Francis and the oral evidence of Mrs Pritchard.
18. Mrs Pritchard stated at the Hearing there had been numerous incidents requiring attention at her current enterprise and provided an example of an incident which required Mrs Pritchard to be present on the site for 3 nights in order to care for a horse, although I note that this was the only instance provided where Mrs Pritchard had to stay overnight in the last 18 months. From the evidence before me, the need to attend to the horses during the night is very occasional. Whilst such episodes cannot be predicted, they are clearly infrequent. There is no convincing evidence before me to suggest such incidences are any more likely overnight than during the day when workers are present and thereby it is not shown that the enterprise requires a worker to live on site.

19. With regard to security, I understand the concerns voiced by Mrs Pritchard in relation to the effect of the enterprise if tack, equipment, or indeed horses were stolen. It was put to me at the Hearing by the appellants side that security systems such as CCTV are not effective and would prevent an immediate response to any incident. However, no substantive evidence has been put to me as to why horses and equipment could not be adequately protected using security systems such as alarms and surveillance, which would also likely act as a deterrent against criminal activity. It has therefore not been adequately demonstrated that no other security measures could be undertaken other than the requirement to live on the site.
20. In terms of the availability of alternative accommodation, as well as property searches noted within the written evidence, I heard at the Hearing from the appellants side that a search for available properties had very recently been undertaken taking into account properties for rent and sale in both a 3 mile, and 5 mile radius of the appeal site. Although I have no written evidence of these later searches, I am told these searches indicate 1 property for rent within 3 miles, and 7 within 5 miles, and 5 properties for sale within 3 miles, and 8 within 5 miles. However, it is put to me that the cost of these properties is prohibitive.
21. The Council have put to me that they would expect a search radius of 5-10 miles to be appropriate, with settlements providing significant numbers of accommodation 7 miles from the appeal site. The appellants currently do not live at their existing premises, but some 30 minutes drive away. However, the landowner from whom the appellant rents the land does currently live within sight and sound of the enterprise, and I am told provides observation of the site and animals and informs the appellants of any issues.
22. Notwithstanding, the appellant's current business has operated successfully with the appellants being some distance from the site. I accept that the close proximity of the landowner may have resulted in some incidents being dealt with in a more timely manner. However, given the infrequent nature of potential incidents, and that the site would be attended during the day, as well as possible security systems such as CCTV that could be utilised during the night, travel time from properties up to 10 miles away would appear appropriate.
23. On the basis of the evidence before me, I am not persuaded that nearby alternative accommodation, including within nearby settlements, which may be close enough to make visits to the site at unsocial hours, including in response to remote alarms, is not a practical proposition.
24. The BA states that the appellant's existing enterprise has made a profit in each of the eleven years it has been running. Three years of tax returns were provided within the application documentation outlining the turnover and allowable expense of the business. Whilst providing some confidence, these do relate to the existing business, and the proposal does differ in terms of capital costs, expenses and services provided such as livery not being offered within the proposed enterprise. In this regard the BA notes a gross margin of £53040 per annum once fully established. However, this is based on various assumptions, and I note inconsistencies with the assumptions utilised and that put forward elsewhere in evidence, such as the number of horses and ponies as well as projections within other supporting information such as the Design and

Access Statement. As such, I cannot be certain that the projections in the evidence before me are correct.

25. I also heard from the appellants at the Hearing in relation to the anticipated capital costs of the new enterprise, noting the appellants ability to undertake some of the work themselves, as well as methods of finance in place to meet the projected expenditure. The proposal however is not supported by a great deal of verifiable financial information, noting that some potentially large expenses such as electrical connections have not been factored in, or any evidence (aside from a quote for a bore hole handed to me at the Hearing) to confirm the figures given.
26. Whilst I acknowledge that the appellants have operated a similar enterprise successfully elsewhere for a significant period of time, this proposal relates to a differing site with differing financial implications. Projections provided to me indicate an increase in profits which I was told at the Hearing by the appellants side would be due to increases in fees as well as less cost in the business due to the appellants not having to rent the land or their accommodation.
27. However, I was also told by the appellants about difficulties with demonstrating projections due to 'no 2 days being alike' within the business. Although this may be so, I find inconsistencies with the information provided. There is also some uncertainty in the submission in terms of numbers of lessons, hacks or camps that would be offered, with variance given within the written evidence, and orally at the Hearing. In the absence of more detailed consistent information, robust evidence that the activity is planned on a sound financial basis is absent.
28. Although I am considering part of this appeal as a proposal for accommodation for a temporary period, to allow it would require reasonable certainty that, within three years, the business would be capable of becoming financially viable. On the basis of the evidence before me, and that provided at the Hearing, such reassurance is currently lacking.
29. For the above reasons, I conclude that an essential need for a rural worker to live permanently at the appeal site has not been demonstrated. Accordingly, the proposal would conflict with LP Policy DP13, the purpose of which I have previously outlined.

Character and Appearance

30. The appeal site is an area of agricultural land located to the southeast of Bindon Lane and bordered by a railway line. Due to the surrounding topography, which falls from Bindon Lane towards the site, the site is at a noticeably lower level than Bindon Lane but is largely screened from public views by mature hedge and tree planting outside of the site area to the northwest. The site is not within any protected landscape designations, although my attention has been drawn to the proximity to the Cranborne Chase Area of Outstanding Natural Beauty and Dark Skies Reserve.
31. The site falls within the South West Upper Valley Character Area of the Mendip Landscape Character Assessment (LCA), the key characteristics of which include small scale irregular field patterns. Furthermore, perceived characteristics also make an important contribution to the character of the area and are noted to include areas feeling generally remote and isolated, unspoilt

- countryside and areas of good degrees of tranquillity with occasional disturbance from rail lines. I observed that the appeal site exhibits these key and perceived characteristics and contributes positively to the character and appearance of the area.
32. A section drawing has been provided with the appeal documentation that is based on lidar data. Whilst this may not provide as accurate a representation as a topographical survey, it does provide a good indication of the topography of the area and relationship with the proposed built form.
33. The proposed mobile home is located to the higher area of the site. Whilst the small scale, proposed hedging and temporary nature of the mobile home are acknowledged, it would nevertheless appear somewhat incongruous in the landscape from the viewpoints it would be visible due to its domestic appearance. The parking area would similarly be partially screened by hedging, and whilst public views of parked vehicles may be limited due to the current mature planting, the scale of the parking provision, when in use would also draw the eye to the site, particularly if the mature screening were not to be retained. However, I acknowledge that the barn buildings would be of an appearance, and incorporate appropriate external finishing materials reflective of, and not dissimilar to other agricultural buildings I observed in the wider area.
34. From my observations, glimpse views of the barn buildings, mobile home and parking area would currently be possible from Bindon Lane, more so during winter months when foliage is not in leaf, with wide views being available from private land to the south. Moreover, as the existing mature screening along the northwest boundary is outside of the appeal site, the appellant has no control over its retention, with minimal area available for any additional landscaping along this boundary. If this were to be removed, notwithstanding floor and roof levels, the variety of proposed built form would be prominent.
35. Additionally, notwithstanding the appellant's suggestion at the Hearing that a condition could be imposed restricting lesson numbers, the proposal would inevitably result in movements and general activity at the appeal site that differs significantly and noticeably from the agricultural use of the site, at odds with the previously described perceived characteristics of the area.
36. Furthermore, even if conditions were imposed ensuring floor levels are not significantly increased, or an appropriate lighting scheme including times of operation could be agreed and secured, such lighting in this location would add to the prominence of the enterprise when in use. In combination, the scale of proposed built form, movements and general activity associated with the enterprise, as well as lighting required during the hours of operation in darkness would result in a noticeably intensive use within the surrounding countryside landscape which is largely undeveloped between Bindon Lane and the railway line.
37. Although equine enterprises are not unusual in the countryside, such an intensive commercial use in this location, combined with the reliance on mature screening outside of the appellant's control, would result in a level of development, at odds with, and harming the previously described characteristics of the surrounding area.

38. Consequently, I conclude that the proposal would have a harmful effect on the character and appearance of the area. The proposal would therefore conflict with LP Policies CP1, CP4 and DP1. These policies seek, amongst other matters, to ensure development is appropriate to the location and maintain and enhance local identity and distinctiveness.

Highway Safety

39. The surrounding highway network features long sections of single lane highway and tall hedge boundaries and the existing access provides restricted visibility. Whilst there is some disagreement between parties as to the actual number of movements that would be attracted to the site, I note that the Highway Authority (HA) based their assessment on movements associated with the appellant's existing enterprise.
40. I acknowledge the lack of Personal Injury Collision records near the appeal site and given the likely associated traffic movements I find the proposal is unlikely to pose a severe impact upon the local highway network, and the HA have reached a similar finding. However, the existing visibility is restricted, and given the additional movements that would be attracted to the site, I find that the proposal would result in a highway safety concern for all users of the highway by vehicles accessing and egressing from the access. Nevertheless, access arrangements have been amended through the planning application process with an amended plan providing a realigned access creating a visibility splay, and the original access being blocked up.
41. An interested party has submitted to the Council a 'Traffic Objection Report' (TOR) dated May 2022 which questions the number of equine and vehicular movements and concludes, that the access does not meet required standards. The HA considered that notwithstanding the findings of the TOR, due to the nature and geometry of the highway in this location the visibility splays as submitted were acceptable, subject to the imposition of planning conditions.
42. Although I find from my own observations of the highway adjacent the site, including the width of carriageway, number of vehicular movements along the highway and speeds vehicles were travelling at the time of my visit, that the revised access would provide sufficient visibility for the vehicular movements likely to be attracted to the site, a 'Grampian' style condition has been suggested by the Council. This is in relation to the closing up of the original access, which would be required to ensure an access with adequate visibility is utilised. The PPG states that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Furthermore, the PPG states Grampian conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
43. I am informed that an interested party has a legal right of way over the existing access and track and was told at the Hearing that no consent has been provided to block the right of way which has not been refuted by the appellant. Furthermore, concerns have been raised by interested parties, but refuted by the appellant, in relation to the ability to maintain the visibility splays in perpetuity. Notwithstanding, whilst rights of access and land ownership are a civil matter outside of the planning regime, matters such as a right of access

could prevent the closing up of the access, with no prospect of the appellant being able to fulfil the requirement of the condition.

44. I therefore find that the suggested Grampian style condition would not meet the tests of conditions as outlined within the Framework and PPG. A further condition was suggested by Mr Burgess at the Hearing which would require the submission of revised access plans and alternative arrangements to the stopping up of the existing access. Nonetheless, given I have found that the existing access would result in highway safety concerns, I am concerned that any planning permission granted might be negated by the lack of the ability to provide suitable access arrangements. Therefore, this is a matter which should be resolved before planning permission is granted rather than leaving it to a planning condition.
45. Consequently, the proposal would result in a harmful effect on highway safety, contrary to LP Policy DP9. This policy seeks, amongst other things, to ensure safe and satisfactory access. Furthermore, the proposal would be contrary to the provisions of the Framework which requires safe and suitable access for all users.

Other Matters

46. The Grade II listed Little West Barn Farm lies to the southeast of the appeal site. From my observations, in so far as they relate to this scheme, the setting of this heritage asset is the immediate surrounding area of the building, with the significance of this heritage asset arising from its age and architectural features. I have undertaken my statutory duty pursuant to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting, or any features of architectural or historic interest which it possesses. In view of the intervening railway line and separation distances involved, I find that the proposal would have a neutral effect on, and thereby preserve, the heritage asset.
47. The proposal would support rural business and rural employment in accordance with the general aims of the Framework. The proposal would also provide some employment opportunities and associated expenditure during the construction phase. However, any benefits to the rural economy and employment would be modest due to the relatively small scale of the business. I also heard from the appellants side at the Hearing the importance of the role of horses in society and the positive effect horses have on local communities and the wellbeing of people, as well as the benefits to school children and the ability to undertake work experience.
48. Nonetheless, some of these benefits already exist within the appellants existing enterprise which would be relocated, and therefore I can only give these matters minimal weight in favour of the proposal.
49. I acknowledge the site location within Flood Zone 1, the findings of the appellant's Ecological Appraisal and the discussions at the Hearing in relation to a borehole and the use of land for grazing, as well as my observations on site of the relationship between the proposal and neighbouring dwellings. In view of my findings on the main issues above, even if I were to find no harm in these matters, these matters would be neutral in the planning balance and would not lead me to any different overall conclusion.

50. Another planning permission¹ granted by the Council is cited by the appellant. I acknowledge that consistency in decision making is important, however I do not have full details of the factors that led to the granting of this other planning permission. It was said at the Hearing to be related to a racehorse training enterprise at a differing site and location. Therefore, it is materially different to the appeal scheme before me.

Conclusion

51. The proposal would conflict with the development plan, read as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

S Harrington MA MRTPI

INSPECTOR

¹ 2020/1836/FUL

APPEARANCES

FOR THE APPELLANT:

Andrew Burgess	Planning Consultant
Caroline Martin	Architect
David Francis	Veterinary Surgeon
Maria Pritchard	Appellant
Tim Gardner	Surveyor

FOR THE LOCAL PLANNING AUTHORITY:

Anna Jotcham	Somerset Council
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INTERESTED PARTIES:

Matt Williams	Planning Consultant on behalf of Fiona Macintosh and Ian Peters
Ian Peters	Local resident
Alan Fox	Local resident
David Yeoman	Local resident
Julie Fuller	Local resident
Andrew Fuller	Local resident
Camilla Evans	Local resident
Harry Pritchard	Interested party
Maddy Ferrari	Parish Councillor and Local resident
Barry Clark	District Councillor
Philip Ham	District Councillor

DOCUMENTS submitted at the Hearing

- Additional suggested condition - Levels;
- Core Policy 1 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (adopted 15 December 2014);
- Bore Hole Quote – Tor Drilling.

DOCUMENTS submitted following the Hearing

- Deed of Easement 8 April 2021;
- Deed of Easement 1st June 2022;
- Title Register - WS89809;
- Additional suggested condition – Access.