



Appeal Decision

Site visit made on 18 December 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/Q3305/W/23/3323389

The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset BA4 4AQ

- 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 & Mrs Matthew & Cassia Stevens against the decision of Mendip District Council.
- The application Ref 2023/0149/VRC, dated 27 January 2023, was refused by notice dated 24 March 2023.
- The application sought planning permission for Redevelopment of Existing Workshop with a 3 Bedroom Dwellinghouse, along with Conversion & Extension of Existing Dwellinghouse to Studio/Workspace & Ancillary Accommodation for Tourism or Annexe Use without complying with conditions attached to planning permission Ref 2019/1813/FUL, dated 14 February 2020.
- The conditions in dispute are Nos 3 and 4 which state that:
Condition 3: *'The building shown on drawing number 1392-05A as ancillary accommodation and home workspace shall be used for accommodation ancillary to the dwelling hereby approved or for holiday let use only and shall not be occupied as a person's sole or main place of residence.
In relation to the holiday let an up-to-date register of all occupiers on the site (including their main home address), shall be maintained and this information shall be made available at all reasonable times to the Local Planning Authority.'*
Condition 4: *'The holiday let use hereby approved shall not be operated other than by the occupiers of the new dwelling hereby approved.'*
- The reasons given for the conditions are:
3. *The use of the holiday let as an independent dwelling would require further detailed consideration given the proximity to the host dwelling in terms of amenity and the provision of parking in accordance with Policies CP1, CP3, DP7 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).'*
4. *To allow the Local Planning Authority the opportunity to assess the acceptability of the Holiday let being operated independently in the interests of protecting residential amenity of the occupiers of both properties and providing adequate parking provision having regard for Policies DP7 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).'*

Decision

1. The appeal is allowed and planning permission is granted for Redevelopment of Existing Workshop with a 3 Bedroom Dwellinghouse, along with Conversion & Extension of Existing Dwellinghouse to Studio/Workspace & Ancillary Accommodation for Tourism or Annexe Use at The Forge Cottage, Dark Lane, North Wootton, Shepton Mallet, Somerset BA4 4AQ in accordance with application Ref 2023/0149/VRC dated 27 January 2023 without compliance with condition numbers 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 13 and 14 previously

imposed on planning permission Ref 2019/1813/FUL dated 14 February 2020 and subject to the schedule of conditions below.

Application for costs

2. An application for costs was made by Mr & Mrs Matthew & Cassia Stevens against Mendip District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted under reference 2019/1813/FUL on the 14 February 2020 for the redevelopment of an existing workshop to create a dwelling along with conversion and extension of an existing dwelling to a studio/workshop and ancillary accommodation for tourism or annexe use. The planning permission was subject to conditions. The planning permission has been implemented.
4. On the 27 January 2023 the appellant applied to remove condition numbers 3 and 4. Condition number 3 states that the ancillary accommodation and workspace shall be used for ancillary accommodation or for a holiday let only and shall not be occupied as a person's sole or main place of residence. Condition number 4 states that the holiday let shall not be operated other than by the occupiers of the new dwelling.
5. On the 24 March 2023 the application to remove the conditions was refused by the Council on the basis that the proposal would result in a permanent dwelling in an unsustainable location where residents would be dependent on the use of the car contrary to local plan policies and the National Planning Policy Framework (the Framework). This reason does not relate to the original reasons for imposing the conditions.
6. In light of the above, the main issue is whether consideration of the removal of conditions is confined to the original reasons for imposing the conditions, and if it is not, whether the removal of the conditions would result in a dwelling in an appropriate location, with particular regard to the local development strategy.

Reasons

7. I acknowledge that the reason for refusal does not relate to the original reasons for imposing the conditions and that when imposing conditions clear and precise reasons must be given in accordance with the Framework and Planning Practice Guidance (PPG). I further acknowledge that considerations regarding the removal of conditions usually stem from the reasons given for the conditions when permission was granted. However, consideration of an application to remove conditions must be based on present circumstances regardless of whether an applicant has knowledge of planning or the planning history of a site. As a result, a Council may argue as part of an application to remove conditions that the conditions are necessary for different or additional reasons. This is what the Council have done in this case in relation to condition number 3. As a result, consideration of the removal of conditions is not confined to the original reasons for imposing the conditions.
8. Turning to the location of the appeal site, Core Policies 1 and 2 of the Mendip Local Plan 2006-2029 Part 1: Strategy and Policies (December 2014) (LP) direct new residential development towards the five principal settlements and

to the Primary and Secondary Villages. The site does not fall within one of these settlements.

9. In other villages and hamlets, development may be permitted in line with Core Policy 4 of the LP. Core Policy 4 allows for some limited development in rural settlements and the wider rural area, but the proposal for an unrestricted dwelling does not meet any of the identified circumstances where development would be supported in rural areas.
10. As the removal of condition number 3 would result in an unrestricted dwelling in the countryside, its removal would be contrary to the local development strategy. Moreover, the appeal site is in a location that is remote from a range of services and facilities with the access roads generally narrow, unlit and without pavements. As a result, walking and cycling to services and facilities would not be attractive to the majority of people who would be reliant upon the use of the car contrary to Policy DP9 of the LP that supports proposals where they 'make safe and satisfactory provision for access by all means of travel (particularly by means other than the private car)'.
11. With regard to condition number 4, I note that the Council state that they have no concerns with the removal of this condition and would have granted its removal had they been able to issue a split decision. On the basis of the presence of a high fence and public footpath between the dwellings, separate parking provision and outdoor space of usable sizes, and separation distance between Forge Cottage and Forge House, the removal of condition number 4 would not result in significant harm to the living conditions of either occupiers.
12. Whilst I also agree with the parties that no harm would arise by reason of the original reason for imposing condition number 3 due to the separation distance and provision of suitable parking, this does not outweigh the concerns raised above in relation to the location of the appeal site.
13. It follows therefore that although the removal of condition number 4 would be acceptable, the removal of condition number 3 would result in a dwelling in an inappropriate location, with particular regard to the local development strategy. As such, the removal of condition number 3 is contrary to Core Policies 1, 2, 4 and 9 of the LP.

Other Considerations and Planning Balance

14. I have taken into account the lack of objections to the proposal from third parties and the Parish Council, but this is neutral in my consideration. I have also had regard to the lack of other concerns with the proposal with regard to design, impact upon the street scene, living conditions and highway safety. However, these matters are requirements of local and national planning policy and as such are also neutral in my consideration.
15. The appellant raises concerns regarding the lack of engagement and conduct of the Council during its consideration of the planning application. However, these are not matters which are for consideration in this appeal.
16. The removal of condition number 3 would be contrary to the local development strategy due to the location of the site resulting in reliance upon the use of the car. The relevant policies are largely consistent with the Framework where it states that planning decisions should guide development towards sustainable solutions. Therefore, the proposed development would be contrary to the

development plan as a whole and I give significant weight to the conflict with these policies.

17. The Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 7, paragraph 11 d) ii. of the Framework should be applied. The appeal proposal would provide a number of benefits, including much needed open market housing which would contribute towards the supply and mix of two-bedroom dwellings in a location that I have been advised is not constrained by phosphates entering the Somerset Levels RAMSAR site. However, given the scale and nature of the development, the benefits would be limited. In contrast, I have found that the appeal proposal would result in significant harm to the local development strategy. Accordingly, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.

Conditions

18. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The conditions have been amended from the conditions on the original planning permission to reflect the implementation of the consent.
19. As the planning permission has been implemented, there is no need for a time limit condition (Condition No. 1 of planning permission Ref: 2019/1813/FUL). However, a condition listing the approved plans is again necessary for the avoidance of doubt and becomes condition number 1.
20. In light of my findings above, condition number 3 is necessary but becomes condition number 2 and I have amended the wording to reflect the plans before me. Condition number 4 is removed.
21. The wording of original condition number 5 is amended to ensure the retention of parking and turning spaces given that the development has been occupied. This becomes new condition number 3.
22. There was no condition number 6 on the original permission, but original condition numbers 7 required submission and retention of details related to the provision of a bat box. Whilst condition number 7 has been discharged, the original condition required the bat box to be retained in perpetuity. As a result, I have amended the wording of the condition to reflect this, and it becomes new condition number 4.
23. Original condition number 8 requiring works affecting bats to proceed under the supervision of an ecologist has been complied with so is no longer necessary. Original condition number 9 ensuring that any external lighting is provided such that it does not harm bats is again required in the interests of protecting biodiversity. This becomes new condition number 5.
24. Original condition number 10 required works to take place between 1st March and 30th September but as the development has been constructed, this condition is no longer necessary.
25. Original condition numbers 11 and 12 required submission and retention of details related to the provision of bat boxes and provision for nesting swallows.

As these conditions have not been complied with, they are amended and re-imposed to ensure that the bat boxes and provision for nesting swallows are approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and provision of the details before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met. These become new condition numbers 6 and 7.

26. As the original development has been implemented and occupied, there is no need for the remaining original condition numbers 13 and 14.

Conclusion

27. For the reasons set out above condition number 3 is reasonable and necessary and should therefore remain subject to amended wording. However, condition 4 is not required to make the development acceptable and therefore does not meet the tests as set out in paragraph 56 of the Framework. Therefore, the appeal is allowed by amending condition 3 and deleting condition 4 as set out in the decision paragraph above.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1595-01A Existing Location Plan Drawing; 1595-02A Existing Block Plan Drawing; 1595-03A Existing Site Plan Drawing; 1595-04A Existing Cottage Floor Plans; and 1595-05A Existing Cottage Elevations.
- 2) The building shown on the approved plans as The Forge Cottage shall be used for accommodation ancillary to The Forge House or for holiday let use only and shall not be occupied as a person's sole or main place of residence.

In relation to the holiday let an up-to-date register of all occupiers on the site (including their main home address), shall be maintained and this information shall be made available at all reasonable times to the Local Planning Authority.
- 3) The access, parking and turning areas shown on the approved plans shall be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.
- 4) The bat box provided to the building as detailed in the photographs and associated email dated 8 April 2020 shall be retained in perpetuity.
- 5) No external lighting shall be erected or provided on the site until a "lighting design for bats" has been 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 thereafter be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design.

No new external lighting, other than that shown on the approved plans, shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.

- 6) Unless within 3 months of the date of this decision details of a scheme for provision for nesting swallows have been submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 2 months of the Local Planning Authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented. Upon implementation of the approved scheme, it shall be retained thereafter in accordance with the approved details. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.
- 7) Unless within 3 months of the date of this decision two Beaumaris Woodstone maxi bat boxes or similar have been mounted under the eaves, at least 4 metres above ground level and away from windows on the south west elevation of the dwelling hereby approved, the use of the site shall cease until such time as the bat boxes have been provided. Upon implementation of the bat boxes, they shall be retained thereafter in perpetuity. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

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