



Appeal Decision

Site visit made on 28 November 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th December 2024

Appeal Ref: APP/R3325/W/24/3347253

Land at 339350E 113320N, Allowenshay, Somerset TA17 8TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs L Rutter against the decision of Somerset Council.
 - The application Ref is 23/02015/FUL.
 - The development proposed is described on the application form as, "Proposed Residential Dwelling to replace an existing Agricultural Barn".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Differing to the description of development in the banner heading above, the Council's decision notice accurately describes the development as shown on the supporting plans as, "Demolition of existing agricultural barn and erection of single storey detached dwellinghouse and detached garage with associated landscaping works". I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms.
3. A revised National Planning Policy Framework (the Framework) was published in December 2024. The main parties were provided with an opportunity to comment, and I have taken the comments received into account. I have had regard to the revised Framework in my decision.

Main Issue

4. The main issue is whether the appeal site is a suitable location for the proposed development, having particular regard to the spatial strategy in the development plan and the accessibility of services and facilities.

Reasons

5. The appeal site comprises a parcel of agricultural land which contains a Dutch barn, located within Allowenshay, a hamlet. It is common ground between the main parties that in planning policy terms the site is in the countryside, as defined by Policy SS1 of the South Somerset Local Plan (2006-2028) (adopted 2015) (Local Plan). As such, Policy SS2 of the Local Plan, which relates to development in rural settlements, is applicable. Paragraph 5.23 of the Local Plan emphasises that rural settlements are considered as locations where there will be a presumption against development unless key sustainability criteria can be met.
6. The site is used for access under license by the occupiers of Higher Dairy House. It has not been stated that the necessity for the vehicle movements associated

with that usage would cease in the event that this appeal is allowed, only that the license would be revoked. It has not therefore been shown that the proposed development would necessarily result in the cessation or a reduction in vehicle movements to and from Higher Dairy House. The proposed development is intended to remove a daily work commute to Allowenshay in the context of the proposed self-build scheme. Notwithstanding this intention, the proposed dwelling would outlast these personal circumstances over the long-term, which in any event could change at any time. Therefore, these matters are of limited relevance in terms of assessing the traffic impact of the proposed development.

7. I have had regard to the submitted Highways Technical Note. Few details have been provided to illustrate the amount of traffic generated by the present and historic usage of the barn for agricultural purposes. Taking account of the small size of the site and its capacity for storage, on a balance of probabilities it appears that the amount of traffic movements has not been significant. Few details have been provided to explain the distances travelled by any agricultural vehicles using the site.
8. The proposed development would result in a change to the type of vehicles accessing and exiting the site. Trip patterns would also change, with vehicles undertaking trips for a different purpose with likely differing distances involved when compared with the agricultural use of the site. The proposed development would not be likely to cause severe residual cumulative impacts on the road network. Nevertheless, using the figure provided by the appellants, of approximately 6 vehicle movements per day, on the basis of the limited information before me relating to the existing and historic amount of trip movements to and from the site, it is likely that the proposed development would result in an increase in vehicle, pedestrian, and cycle movements.
9. Although Allowenshay itself lacks the necessary services required for day-to-day living, the appellants have referred to the services and facilities available at Ilminster, Kingstone, Dinnington, Dowlish Wake, and Seavington. Whilst these settlements are not distant from the site, they are not easily accessible by sustainable modes of transport, including by walking and cycling. For example, I observed that the Public Right of Way from Allowenshay to Dinnington can only be accessed via a narrow unlit road without the benefit of footways, and that much of the path itself runs through unlit agricultural land. Similarly, I observed that the route along Ludney Lane and the route towards Ilminster to the west of Ludney Lane involves traversing narrow, unlit roads.
10. As such, apart from occasional recreational use, these routes would not be particularly attractive for regular walking and cycling to access the services and facilities beyond Allowenshay, and would be unlikely to be used during the night-time or during the winter months. Whilst mention has been made of the Council providing bus service(s) from Allowenshay to local schools in the past, presently it is unclear whether such services would ever resume. There are no bus stops in Allowenshay, which would further limit the future occupiers' ability to access sustainable transport options.
11. Over the long-term, the future occupiers of the proposed dwelling would therefore be highly likely to be almost completely dependent on the use of private vehicles to access even basic day-to-day services, such as those relating to shopping, employment, and leisure.

12. I note that home deliveries, including for food shopping, are more common in recent times, and that some of these services use electric vehicles. The proposed development would incorporate electric charging points for both vehicles and e-bikes. Mention has also been made of a fishmonger attending Allowenshay every week. However, the Government's 2030 and 2035 targets referred to by the appellants relate to new electric vehicles, not all vehicles, and the use of these services and electric-powered transport cannot be mandated at this time. Rather, these depend on personal choice and preference.
13. Taking account of the poor accessibility of the site to services and facilities, the continual use of internal combustion engine-based private vehicles by the future occupiers of the proposed dwelling is a strong possibility over the long-term. Considering the acute lack of services and facilities in Allowenshay, this situation would be contrary to the aspiration set out in paragraph 5.41 of the Local Plan that it is important to ensure that the occupiers of new homes in rural settlements are able to live as sustainably as possible by having easy access to basic facilities that provide for their day-to-day needs.
14. I therefore find that the site is not a suitable location for the proposed development, having particular regard to the spatial strategy in the development plan and the accessibility of services and facilities. The proposed development would conflict with Policy SS1 of the Local Plan which provides that, amongst other things, rural settlements will be considered as part of the countryside to which national countryside protection policies apply (subject to the exceptions identified in Policy SS2), and with the final paragraph of Policy SS2 of the Local Plan which provides that proposals for housing development should only be permitted in rural settlements that have access to two or more key services listed at paragraph 5.41 of the Local Plan.
15. The proposed development would also conflict with chapter 9 of the Framework, which aims to promote sustainable transport, including paragraph 109 d) and e) of the Framework which seeks to, amongst other things, realise opportunities from existing transport infrastructure in relation to the location of development, and pursue opportunities to promote walking, cycling and public transport use.

Other Matters

16. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.
17. As no copy of Sedgemoor District Council's Supplementary Planning Document has been provided, I am unable to assess the proposed development against it. As only a Location Plan, but no Officer's Report for planning application Ref 37/19/00034/OUT has been provided, the logic employed by the relevant Local Planning Authority in approving that application, including their analysis of the various considerations in that case, is unclear. Reference has been made to a grant of planning permission for over 100 houses at Broadway. As copies of the planning permission and plans have not been provided in relation to that approved development it has not been possible to make a meaningful comparison with the proposed development. None of these matters therefore changes my findings on the main issue above.

Relevant development plan policies

18. The development plan policies referred to in the main issue above constitute relevant development plan policies for the purposes of paragraph 11 d) of the Framework. It follows that the development plan is not deemed to be out-of-date on the ground that it does not contain specific policies relating to certain matters, such as self-build housing, for example. The weight given to the identified conflict with the relevant development plan policies is accordingly not reduced.

Fallback position: Class Q

19. I have had regard to the purported fallback position under Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which relates to buildings on agricultural units and former agricultural buildings to dwellinghouses. It is not the purpose of this appeal decision to provide a formal determination as to whether prior approval should be granted under Class Q. Instead, it is necessary to consider whether or not there is a real prospect that such a development could take place.
20. It was held in *Hibbitt*¹ that the concept of "conversion" is found in the overarching provisions of Class Q (not in Q.1) and it thereby introduces a discrete threshold issue such that if a development does not amount to a "conversion" then it fails at the first hurdle and there is no need to delve into the exceptions in Q.1, and that the concept of conversion has inherent limits which delineate it from a rebuild.
21. No new foundations would be created under the fallback position. The appellants have stated that, as thermal lining is to be used under the fallback position, no new wall(s) would be required, and only approximately 15% of new metal sheet (cladding) would be required.
22. However, in the absence of any submitted plans to illustrate the fallback position, it is unclear how this 15% figure has been arrived at. This is particularly so, as the barn is currently open on 2 sides, and partially open on its southern elevation, meaning that new walls of some description would be required to be installed across a significant proportion of the barn, in order for the barn to function as a dwelling, even taking account of the intention that 50% of the elevations would comprise glazing and doors.
23. As these walls would comprise part of the external structure of the building, they cannot be considered to be internal works. This is a separate matter to the question of the extent to which loads would be transferred to the existing frame. Moreover, in addition, a new roof would be required.
24. All-in-all, considering that a considerable amount of new walling and a new roof would be required, and in the absence of plans to demonstrate otherwise, on the basis of the evidence before me and my observations on site, it is likely that the above-mentioned works would be tantamount to a fresh build rather than a conversion, using the terminology adopted in *Hibbitt*.
25. Comparisons have been made with stone barn conversions, but as the fallback position relates to a steel framed barn, these are not directly comparable with the

¹ *Hibbitt v SSCLG* [2016] EWHC 2853

fallback position. Reference has been made to several planning applications², and to appeal decision Refs APP/V2635/W/15/3005848 and APP/J1860/W/22/3294191. However, as no plans have been provided in relation to those applications and appeals, the extent to which they are comparable with the fallback position is unclear.

26. Furthermore, the proposed development considered in appeal decision Ref APP/J1860/W/22/3294191 involved the retention of a substantial extent of existing block walls, which is not the case with respect to the fallback position. Appeal decision Ref APP/V2635/W/15/3005848 was issued before the judgment in *Hibbitt*, and accordingly it is not certain that the Inspector took into account the relevant law on this matter as it currently stands.
27. Consequently, none of these application and appeal decisions alter my findings above. I have had regard to the Village Residential Assessment drawing³. This drawing demonstrates that conversions under Class Q have occurred in Allowenshay. That other conversions have occurred nearby does not change my findings above, which are based on the specific attributes of the existing barn and the extent of the building operations likely necessary to convert it.
28. Hence, taking account of *Mansell*⁴, and also noting that no evidence of a submission of a prior approval application under Class Q has been provided, the fallback position is merely a theoretical prospect. As such, this is a neutral matter, which does not weigh in favour of the proposed development.

Council tax

29. The proposed development would result in benefits to the Council in relation to Council tax. The Planning Practice Guidance (PPG) however makes it clear that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body⁵. This is also a neutral matter.

Somerset Levels & Moors Special Protection Area & Ramsar Site

30. The main parties have made reference to phosphate mitigation in relation to the Somerset Levels and Moors Special Protection Area and Ramsar Site. However, as following my conclusion below, the appeal is being dismissed for other reasons, there is no need to consider the potential implications of the proposed development in these respects, nor is it necessary to consider the submitted Reservation Notice relating to Phosphate Credits in any further detail. I therefore make no further comments on these matters.

Other Considerations and Planning Balance

Self-build housing

31. The proposed development relates to a self-build dwelling, which is supported by paragraph 73 b) of the Framework. The appellants have provided figures demonstrating an ongoing shortfall in the provision of self-build sites in the

² 20/00981/FUL, 21/01493/FUL, 18/03822/FUL, 20/01116/PAMB, 21/02210/PAMB, 16/01350/FUL, 19/01526/PAMB, and 18/02554/PAMB

³ Drawing no. 2206/00/PL/055

⁴ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

⁵ Paragraph 21b-011-20140612

Somerset Council South area. The Council have suggested a planning condition, put forward to ensure that the proposed dwelling would be a self-build dwelling.

32. The power to impose conditions is not unlimited. Conditions must satisfy the policy tests set out in paragraph 57 of the Framework. The suggested condition would attempt to restrict the first occupation of the proposed dwelling to a person or persons who had a primary input into the design and layout of the dwelling. However, as the PPG makes clear, planning permission usually runs with the land and it is rarely appropriate to provide otherwise⁶. This is not a case where exceptional circumstances exist which would make it appropriate to depart from this fundamental principle.
33. Additionally, any necessary restrictions on tenure, including prohibiting the letting or sale of the dwelling for a certain period of time, would be more properly secured through a planning obligation. This is because planning obligations are intended to be used where it is necessary to restrict the development or use of the land in any specified way, as set out at s106(1)(a) of the Town and Country Planning Act 1990 (as amended).
34. The guidance given in the PPG referred to by the appellants⁷ relates to circumstances where the same objective can be met using either a condition or a planning obligation. It is evident from my reasoning above that this is not the case here. Thus, there is no effective mechanism before me to secure proposed development as a self-build scheme. This considerably limits the weight which can be given to this matter in support of the proposed development.
35. Appeal decision Ref APP/J3720/W/23/3328604 related to an outline application for 5 dwellings, as opposed to one as proposed in this appeal. The appellants have claimed that the planning obligation in that appeal was put in place as the future self-builders had not been involved in any design. Even if that were the case, it is clear from the Inspector's decision that a key reason for taking account of the planning obligation was that it would provide an appropriate mechanism to secure the proposed housing as self-build / custom housing, including with respect to matters of tenure. For the reasons given above, no such effective mechanism is before me. As such, that appeal decision is not directly comparable with the proposed development. As a result, it does not change my findings on this matter.

Development plan

36. The proposed development would provide one new dwelling in an existing residential area on a site which is situated in-between plots in residential use. This is of particular relevance considering that the Council is currently unable to demonstrate the necessary forward supply of housing sites, as required by the Framework, with a housing land supply figure of 3.7 years being put forward by the appellants. I also note that the quotes provided from the South Somerset District Council Five-Year Housing Land Supply Paper (November 2022) provide in-principle support for the proposed development.
37. The proposed development would contribute towards housing choice and mix by providing a dwelling which would potentially be particularly suitable for older people and persons with disabilities, due to it being built to Lifetime Homes criteria.

⁶ Paragraph 21a-015-20140306

⁷ Paragraph 21a-011-20140306

The proposed development would provide work for local trade persons and local materials are proposed to be used, thereby supporting the local economy.

38. As mentioned above, an effective mechanism to secure the self-build nature of the proposed development is not before me, in contrast to that before the Inspector in appeal decision Ref APP/J3720/W/23/3328604. This greatly limits the weight which can be given to the matters associated with the self-build aspect of the proposed development, including the appellants' local connection to Allowenshay, employment at certain local businesses, commuting patterns, local social ties, and the contribution towards a mixed and balanced community in Allowenshay.
39. The proposed development would incorporate measures to minimise waste and energy requirements both in the initial build and over the long-term, including via a fabric-first approach, thermal bridging, airtightness, and passive solar gain. Efficient and renewable energy supplies would also be utilised, including solar panels in conjunction with a heat pump and a Mechanical Ventilation and Heat Recovery System. This would be in accordance with Policy EQ1 of the Local Plan which provides that, amongst other things, the Council will support proposals for new development where they have demonstrated how climate change mitigation and adaptation will be delivered.
40. Measures are proposed to provide a net gain for biodiversity, including by providing nesting opportunities for birds and roosting opportunities for bats, in line with Policy EQ4 of the Local Plan which provides that, amongst other things, all proposals for development will incorporate beneficial biodiversity conservation features where appropriate.
41. Given the limited quantum of development proposed, of one dwelling only, and the modest size of the site, the above-mentioned benefits would not however be significant over the long-term. In particular, the contribution towards the Council's housing land supply position would be minimal and it has not been demonstrated that any net gains for biodiversity would be substantial. Little weight has therefore been given to the collective benefits of the proposed development, which include the intended self-build aspect of the proposed development. Conversely, the proposed development would undermine the spatial strategy as set out in the Local Plan, and as a likely heavily car-reliant development situated in a hamlet with an acute lack of services and facilities it would be at odds with the Local Plan's aspiration that occupiers of new homes in rural settlements are able to live as sustainably as possible.
42. It follows that the proposed development would conflict with the development plan when considered as a whole, including Policy SD1 of the Local Plan which provides that, amongst other things, the Council will seek to secure development that improves the economic, social and environmental conditions within the District. This is a matter which strongly indicates that planning permission should not be granted for the proposed development.

Paragraph 11 d) ii.

43. Paragraph 11 d) ii. of the Framework is engaged. In this regard, the proposed development would support the Government's objective of significantly boosting the supply of homes, as set out at paragraph 61 of the Framework. The Framework makes clear at paragraph 73 that small and medium sized sites can make an important contribution to meeting the housing requirement of an area,

although as only one dwelling is proposed the individual contribution in this case would be minimal, and as no effective mechanism is before me to secure the self-build aspect of the scheme, paragraph 73 b) of the Framework does not provide support for the proposed development.

44. Considering the absence of services and facilities in Allowenshay, the proposed development would likely have a limited positive impact in terms of maintaining the vitality of rural communities, which is promoted by paragraph 83 of the Framework. The proposed development's economic and social support for nearby villages in the terms of paragraph 83 of the Framework would likely be minimal, due to the limited quantum of development proposed. The proposed development would also receive support from paragraph 187 d) of the Framework by providing a net gain for biodiversity. However, as mentioned above, it has not been demonstrated that any gains in this respect would be significant.

Paragraph 11 d) ii.: key policies

45. In principle, the proposed development would constitute an effective use of land, which is supported by the Framework. However, considering my findings on the main issue above, as the site is not a suitable site for the purposes of paragraph 73 d) of the Framework, due to it being at odds with the Council's spatial strategy, the proposed development would not benefit from the great weight afforded by the Framework to windfall sites as per paragraph 73 d). Furthermore, as the site is currently occupied by an agricultural building, the proposed development would not fall within the definition of previously developed land stated in the Framework.
46. The existing barn on site is congruent in appearance with the rural ambience of the area, although it has a somewhat worn appearance. The proposed siting of the dwelling to the rear of the plot with a garage situated near to the highway would not blend well with the prevailing pattern of development along the street, where dwellings are mostly sited adjacent to or near the carriageway. Its incongruence in this respect would be amplified by its large footprint relative to the size of the plot. On the other hand, the visual impact of the proposed dwelling would be mitigated by it being a single-storey structure set well back within its plot relative to the highway, and through its materials reflecting those used in the locality.
47. On balance, therefore, the proposed development would have an acceptable effect on the character and appearance of the area, in line with paragraph 135 c) of the Framework, and it would not adversely affect the setting or significance of any nearby listed buildings. Nevertheless, as it would merely preserve the character and appearance of the area this is a neutral factor rather than a benefit.
48. I have taken account of the reasons why the proposed development would result in an affordable home from the appellants' perspective, but it has not been demonstrated that the proposed development would meet any of the specific criteria relating to the definition of affordable housing stated in the Glossary to the Framework. The proposed development does not therefore benefit from the key policies relating to affordable homes mentioned at paragraph 11 d) ii. of the Framework.
49. Paragraph 110 of the Framework provides that, amongst other things, opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this particular case, however, the local area has an acute lack of services and facilities and options for available and feasible sustainable modes

of transport are very limited, meaning that the future occupiers of the proposed development would be likely to undertake a very significant proportion of their journeys over a typical week by private vehicles. The location of the site means that sustainable transport modes would not be prioritised, in conflict with paragraph 115 a) of the Framework.

Paragraph 11 d) ii. balance

50. For the reasons given above, little weight is given to the benefits of the proposed development with respect the key policies referenced in paragraph 11 d) ii. of the Framework in relation to making effective use of land, securing well-designed places, and providing affordable homes. The other policies in the Framework considered above also provide limited support for the proposed development, resulting in little weight in its favour.
51. The proposed development would conflict with paragraph 115 of the Framework, which is referenced in paragraph 11 d) ii. as being a key policy for directing development to sustainable locations. Moreover, the proposed development's conflict with the spatial strategy in the development plan means that it would also be at odds with the Framework's requirement that the planning system should be genuinely plan-led (mentioned at paragraph 15 of the Framework). In combination, these factors constitute significant considerations in this case.
52. The adverse impacts of granting planning permission would therefore significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. The proposed development would not benefit from the presumption in favour of sustainable development, found at paragraph 11 of the Framework.

Conclusion

53. Taking all of the above into account, none of the other considerations in this case indicate that this appeal decision should be taken otherwise than in accordance with the development plan.
54. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations including the representations of all interested parties, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR