
Appeal Decisions

Site visit made on 12 February 2025

by **H Faulkner BSc(Hons) MSc PGCE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/E3335/W/24/3351927

Land at New House Farm, Combe Wood Lane, Combe St Nicholas, Chard, Somerset TA20 3NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr D King of Bickenhall Developments Ltd against Somerset Council.
- The application Ref is 24/01421/S73A.
- The application sought the approval of layout, scale, external appearance and landscaping pursuant to condition 01 of Outline planning permission 18/01349/OUT for the redevelopment of farmyard and buildings and the erection of up to 10 dwellings and access thereto without complying with 1 condition attached to reserved matters permission Ref:19/02321/REM, dated 5 March 2020.
- The condition in dispute is No 1 which states that:
 - 1) *The development hereby permitted shall be carried out in complete accordance with the following approved plans:*
 - Site Plan - 2519A-DR-A-050-000 REV C*
 - Location Plan - 2519A-DR-A-050-001*
 - Planting Scheme - 2519A-DR-A-050-002 REV E*
 - Proposed Street Scene - 2519A-DR-A-050-003 REV B*
 - House Type A - 2519A-DR-A-050-004 REV B*
 - House Type B - 2519A-DR-A-050-005 REV B*
 - House Type C - 2519A-DR-A-050-006 REV B*
 - House Type D - 2519A-DR-A-050-007 REV B*
 - Carports - 2519A-DR-A-050-008 REV A*
- The reason given for the conditions is:
'For the avoidance of doubt as to the development authorised and in the interests of proper planning.'

Decision

1. The appeal is allowed and planning permission is granted for the redevelopment of farmyard and buildings and the erection of up to 10 dwellings and access thereto at Land at New House Farm, Combe Wood Lane, Combe St Nicholas, Chard, Somerset TA20 3NH in accordance with the terms of the application, Ref 24/01421/S73A, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr. D King of Birkenhall Developments Ltd against Somerset Council. This application is the subject of a separate decision.

Preliminary Matters

3. The wording under the Decision heading above references the description of development for the outline planning permission, excluding reference to any outline application or reserved matters, as a new planning permission is being granted. I will return to this below.
4. The appeal relates to a proposal to vary a condition on a reserved matters approval. Such an approval is not a grant of planning permission. A section 73 application seeks permission for development to be carried out without complying with a condition imposed on a planning permission. Therefore, it is not possible to grant a new approval of reserved matters under a section 73 application. Where such an appeal is allowed the result is the grant of a new full planning permission, and this is reflected in my formal decision above. The parties have been invited to comment on this matter, and I have taken the comments received into account. For consistency, my formal decision uses the description of the development from the original outline planning permission.
5. The appeal is made against the non-determination of the application within the statutory period. The Council has confirmed that had it made the decision the proposal would have been approved. It therefore does not wish to defend the appeal and has recommended planning conditions in the event of an approval. I have had regard to the parties' submissions in establishing the main issues which I set out below.
6. The application form states that the condition to be varied is condition 1 attached to reserved matters 19/02321/REM and refers to the revision of drawings. However, the appeal form references a variation to condition 2 and labels this (approved plans). The decision notice for 19/02321/REM has the approved plans listed as condition 1 with condition 2 relating to external materials. For the avoidance of doubt I have assessed the appeal on the basis of the variation of condition 1 relating to the approved plans list as per the application form.
7. I have also dealt with another appeal¹ by the same appellant adjacent to this site. That appeal is the subject of a separate decision.
8. At the time of my site visit the development had commenced and appeared to accord with the approved plans for the previous permission. For the avoidance of doubt, I have determined the appeal based on those plans.

Background and Main Issues

9. Outline planning permission (18/01349/OUT) approved the redevelopment of the site for up to 10 dwellings and access on 22 March 2019. This was followed by the approval of a reserved matters application (19/02321/REM) on 5 March 2020. Further to that a Non-Material amendment (22/00554/NMA) agreed on 23 March 2022 allowed for changes to Plot 6 and carport arrangements.

¹ APP/E3335/W/24/3351926

Subsequently the Council permitted a S73 application for further changes to the arrangement of the houses and this was issued on 7 December 2022.

10. The outline planning permission, Ref 18/01349/OUT, was granted following a planning obligation securing affordable housing and certain financial contributions under S106 of the Act (the S106 Agreement). Within the S106 Agreement, under the definition of "Permission" clarifies that it relates to any subsequent renewal amendment or modification of a Permission including any permission granted pursuant to S73 or 96A of the 1990 Act and any reference to the development includes the development proposed in any such renewed or amended modification. Even though I would be granting a new full planning permission, if this appeal is allowed, it would nonetheless be granted under section 73 of the 1990 Act and the provisions of the S106 Agreement would therefore continue to apply.
11. This current scheme seeks to make changes to plots 9 and 10 to deliver a split level design. The Council confirm that had it decided this application no issues would have been raised with regards to the principle of the variation, design, amenity, ecology, biodiversity net gain or highway safety.
12. Given that the Council do not wish to contest the appeal, the main issue is whether there are other considerations that might indicate that the proposal would not be acceptable.

Reasons

13. The changes to the design of the proposed houses alters their appearance within the housing development. However, the new split level design works well with the level differences on the site and would reduce the visual impact of the dwellings across the site and wider area. The proposed design complements the rest of the development.
14. The Parish Council is in support of the development and no other objections to the development have been raised by interested parties.
15. Taking all these matters together, and my considerations following the site visit, I conclude that the proposed changes to plots 9 and 10 would comply with the development plan and there are no considerations that indicate otherwise. The development would be acceptable and, in particular, would not conflict with Policies EQ2 of the South Somerset Local Plan 2006-2028 which relates, amongst other things, to high quality design.

Other Matters

16. With regards to the provision of affordable housing and financial obligations there is a S106 Agreement attached to the land to secure these provisions. This relates to this proposal as well as the previous schemes. There are floor area related triggers which are applicable and the level of affordable housing will need to meet the requirements of this agreement where necessary.

Conditions

17. As I have described above, since it is not possible to vary a condition on a reserved matters approval, the effect of allowing this appeal would be to grant a

new, full planning permission. Given this is the case, I have sought the parties' views on what conditions would be appropriate in the event that I were to allow the appeal, including any conditions outstanding from the outline planning permission. The Council has supplied a list of suggested conditions, including a list of plans and the appellants have provided comments on these. The Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect. I have considered conditions against the PPG and the National Planning Policy Framework, and made amendments to improve precision and enforceability as appropriate.

18. I have removed any pre-commencement conditions as they are no longer necessary given that works have commenced. I have also removed conditions requiring the submission or timing of reserved matters, and for any reserved matters submission these are no longer required with the relevant details already submitted and approved.
19. I have varied the plans condition to include the plans showing the amended layout that is the subject of this appeal and combined the plans approved at outline and reserved matters stages.
20. The appellant makes reference to the removal of trees shown on a previously approved plan and the proposed new condition 12. This decision seeks to re-impose conditions attached to previous approvals and the relevant drawings. Drawings and full details have not been provided to reflect this change and even if they were it would not be possible to substitute them as part of this appeal and they do not directly link to any previous formal approval.
21. Condition numbers 4 (construction management), 10 (surface water drainage) of the outline consent 18/01349/OUT have been discharged by the appellant. As a result, these have now become compliance conditions in accordance with the approved details as new condition numbers 13 and 16.
22. Condition number 3 (surface water disposal) attached to the reserved matters consent 19/02321/REM has been discharged by the appellant. As a result, this has now become a compliance condition in accordance with the approved details as new condition number 3.
23. A condition relating to work being carried out in accordance with the wildlife survey attached to the outline consent remains relevant and necessary and is reimposed as new condition 17. It has been amended slightly to remove the phrase 'unless otherwise agreed in writing' as this is not necessary as an application would be required to vary the condition.
24. Previously attached conditions to the reserved matters consent remain relevant and necessary with regard to materials (new condition 2), road layouts, driveways, visibility and turning (new conditions 4, 5, 6, 9, 14 and 15), provision of a cycleway and footpath (new condition 7, the wording has been amended to make the condition more precise), street lighting (new condition 8), vehicle charging (new condition 10), tree protection (new condition 11) and landscaping (new condition 12).

Conclusion

25. For the reasons given above the appeal should be allowed.

H Faulkner

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos:

PL003 SLP Site Location Plan
PL-001 Rev A Proposed Floor Plans and Section Plots 9 & 10
PL-002 Rev A Proposed Elevations Plots 9 & 10
SP-001 Rev A Site Plan Plots 9-10
Planting Scheme - 2519A-DR-A-050-002 REV E
House Type A - 2519A-DR-A-050-004 REV B (*for plot 2 only*)
House Type B - 2519A-DR-A-050-005 REV B (*for plot 3 only*)
House Type C - 2519A-DR-A-050-006 REV B
Plot 1 Plans, Sections and Elevations P21-04- PL001
Plot 4 Plans, Sections and Elevations P21-04-PL004
Plot 8 & 9 Plans Sections and Elevations (*For Plot 8 only*) P21-04-PL008
Proposed Residential Development S73 Site Plan with NMA approved and proposed levels P21-04-PL003
Site Street Scene with Approved Levels P21-04-PL005
Plan and 3D isometric approved (NMA) and proposed (S73) levels P21-04-PL006
Site sections x-x, y-y and z-z with approved and proposed levels P21-04-PL007
Plots 1 to 10 Carport plans, sections and elevations P21-04-PL010

- 2) The materials to be used in the external surfaces of the development hereby permitted shall be those as detailed and annotated on the approved plans.
- 3) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway, in accordance with details agreed under discharge of condition application reference 22/01463/DOC1. Such provision shall be installed prior to occupation and thereafter maintained at all times.
- 4) The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, and street furniture shall be constructed and laid out in accordance with details agreed under discharge of condition application reference 22/01463/DOC1.
- 5) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
- 6) The gradients of the proposed drives to the dwellings hereby permitted shall not be steeper than 1 in 10 and shall be permanently retained at that gradient thereafter at all times.

- 7) None of the dwellings hereby permitted shall be occupied until a network of cycleway and footpath connections has been constructed within the development site in accordance with details agreed under discharge of condition application reference 22/01463/DOC1.
- 8) None of the dwellings hereby permitted shall be occupied until a scheme of street lighting has been installed in accordance with details agreed under discharge of condition application reference 22/01463/DOC1.
- 9) The dwellings hereby permitted shall not be occupied until a properly consolidated and surfaced turning space and sufficient parking spaces for vehicles have been constructed within the site in accordance with details agreed under discharge of condition application reference 22/01463/DOC1. Such turning space shall be kept clear of obstruction at all times and not used other than for the turning of vehicles in connection with the development hereby permitted.
- 10) Prior to first occupation of the development hereby permitted, access to covered cycle and electric vehicle charging points will need to be available to all dwellings. This can be provided through shared charge points.
- 11) All tree and hedge protection measures as indicated on the approved plan 2519A-DR-A-050-002 Rev E shall be fully implemented and retained during the entire construction process.
- 12) All landscaping works as indicated on the approved plan 2519A-DR-A-050-002 Rev E shall be fully implemented within the next planting season following the first occupation of any of the dwellings hereby approved. Any trees or plants which within a period of five years from first occupation 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, unless the Local Planning Authority gives written consent to any variation.
- 13) Development must be carried out in accordance with the approved Construction Environmental Management Plan approved under discharge of condition application reference 20/02396/DOC.
- 14) At the proposed main access there shall be no obstruction to visibility greater than 600 millimetres above adjoining road level within the visibility splays shown on the submitted Access Plan (drawing ref. 2519-PL-08). Such visibility splays shall be provided prior to the commencement of any other development hereby permitted and shall thereafter be maintained at all times.
- 15) Prior to the first occupation of any dwelling on site, a footway of 2.0m width shall be constructed over the entire frontage of the site in accordance with a specification to be approved in writing by the Local Planning Authority.
- 16) Development shall only take place in strict accordance with the surface water drainage scheme agreed under discharge of condition application reference 20/02396/DOC.
- 17) All site clearance, demolition and construction works shall take place in accordance with the recommendations within sections 3.5 and 4.3 of the submitted wildlife survey (titled Bat and Wildlife Surveys January 2018).