



Appeal Decision

Site visit made on 25 March 2025

by **K Stephens BSc (Hons) MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/E3335/W/24/3348672

Upper Westholme Farm, Perridge Hill, Pilton, Shepton Mallet, Somerset, BA4 4EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant 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 Mrs Flora Palmer against the decision of Somerset Council.
 - The application Ref is 2024/0591/VRC.
 - The application sought planning permission for the proposed conversion and extension of agricultural buildings to create a dwelling without complying with a condition attached to planning permission Ref 2021/0252/FUL.
 - The condition in dispute is No.2 which states that: *This decision relates to the following drawings: P01A, P02A, P03A, P04A, P05A, P06A, P07A, P08A, P09A, P10A, P11A, P12A and P13A received 26.02.21.*
 - The reason given for the condition is: *To define the terms and extent of the permission.*
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Decision

1. The appeal is allowed and planning permission is granted for the proposed conversion and extension of agricultural buildings to create a dwelling at Upper Westholme Farm, Perridge Hill, Pilton, Shepton Mallet, Somerset BA4 4EN in accordance with the application Ref 2024/0591/VRC without compliance with condition number 2 previously imposed on planning permission Ref 2021/0252/FUL dated 6 June 2022 and subject to the following conditions in the attached schedule.

Preliminary Matters

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) (December 2024) has been published. The document has not raised any new matters which are determinative to this appeal.
3. Listed building consent (LBC) was also granted for the conversion and extension of the agricultural buildings as they were curtilage listed being located in proximity to the Grade II listed Higher Westholme Farmhouse¹. Section 73 of the Town and Country Planning Act 1990 (the Act) is for development without compliance with conditions to which a previous planning permission was granted. I understand from the Council that no application was submitted with regard to the LBC and hence there is no submitted appeal. For the avoidance of doubt I shall confine my consideration to the planning permission.
4. The Council has confirmed that Somerset County Council and the other district councils in Somerset were replaced on 1st April 2023 by a new unitary council, known as "Somerset Council." In terms of the appeal site the council has also

¹ National Heritage List for England: list entry number 1345056

confirmed that the Mendip District Local Plan (Parts I and II) still comprise the relevant development plan.

Background and Main Issues

5. Planning permission and LBC² were granted for the “Proposed conversion and extension of agricultural buildings to create a dwelling”. I saw that the buildings have not yet been converted. The permission and consent relate to a number of single storey former stables and other farm buildings arranged broadly in a courtyard. The northern and southern buildings would be linked together by a narrow partially glazed link that would act as the entrance hall. The proposal would create a one dwelling.
6. The original planning permission was granted subject to a number of conditions and condition 2 lists the plans to be complied with. The appellant has sought to amend condition 2 to substitute new plans that would include the conversion of a third and separate agricultural building (the third building) to the south of the approved buildings. The third building would be linked to the approved conversion scheme by a link and would provide additional living accommodation to the already approved single dwelling.
7. The Council’s first reason for refusal was that this change and conversion of the third building would go beyond the scope of the original planning permission and what would be permissible under an application submitted under s73 of the Act.
8. The Council’s second reason for refusal was that the works involved to convert the third building would require major reconstruction and go beyond what Local Plan Policy DP22 would support. To support their appeal, the appellant has submitted an updated Structural Report as well as a draft Structural Appraisal³ that was undertaken for the original permission that did include the ‘third building’ (referred to as Barn 7 in the Appraisal). In its appeal statement the Council refers to the report finding the building ‘suitable for conversion to domestic accommodation’ and comments that whilst this may satisfy the second reason for refusal, the first reason for refusal remains. The appellant has interpreted this to mean that the second refusal reason has now been overcome by the updated Structural Appraisal. I have no reason to come to a different conclusion on this matter. In light of this I have confined my considerations to the first reason for refusal.
9. In light of this, the main issue in this appeal is whether the proposed variation of condition 2 falls within the scope of an application made under section 73 of the Act.

Reasons

10. Section 73 of the Act allows for the determination of applications to develop land without compliance with conditions subject to which a previous planning permission was granted. Section 73(2) makes clear that only the question of the conditions shall be considered. A s73 application cannot be used to change the description of development.
11. The Planning Practice Guidance (PPG) includes advice on “Flexible options for planning permissions”. This has been updated to reflect the High Court’s findings

² 2021/0252/FUL and 2021/0253/LBC granted 6 June 2022

³ Report produced by DHD Structures dated 17 July 2019

in *Armstrong*⁴. As a result, the PPG no longer refers to a s73 application being a way to seek a “minor material amendment”. Instead the updated PPG advice⁵ states that “*an application made under s73 can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission*”. The advice goes on to state that a s73 cannot be used to change the description of the development⁶.

12. The original description referred to the conversion of ‘agricultural buildings’ in the plural without specifying or describing which ones. There is no dispute between the parties that substitution of the plans to include the third building would not affect the description of the development, the operative part of the permission, as there would still be only one dwelling proposed.
13. However, the Council maintains the proposal would go beyond the scope of the ‘minor amendments’ allowed under s73. However as in the case of *Armstrong* the judge found that the wording of s73 in the Act makes no reference or mention of amendments or that they need to be minor - in fact there is no limit on the degree of change permissible to conditions under a s73 application, hence the amendments that were made to the advice in the PPG detailed above. There is only the requirement to consider the conditions.
14. I am informed that the building the subject of this appeal was included within the original previous permission in that there were full drawings relating to all of the site. I infer from this that the third building was therefore included within the red line boundary of the application site of the original planning permission, although I have not been provided with the plans that were approved as part of the original permission.
15. The proposed replacement plans show a link to the third building to allow access to it from within the already approved conversion. There are also floor plans, elevations and sections that show how the third building would be integrated with the approved scheme to provide additional living accommodation.
16. The appellant’s Planning Statement and other documentation submitted with the original planning application may well have specified which buildings were intended for conversion and added context to the proposal that would have informed the Council’s approach and decision. However, these documents are supporting documents and do not form part of the operative part of the permission.
17. The proposed substitution of the plans would not change the description of the development. Under s73 there is no requirement for the changes to be minor, and no limit to the degree of change. I therefore find the proposal to vary condition 2 and substitute new plans incorporating a third building would fall within the scope of a s73 application.

Conditions

18. If a s73 appeal is allowed, the original permission is not at risk and remains intact and unaltered, and a new planning permission is created. The appellant can

⁴ *Mikael Armstrong v SSLUHC v Cornwall Council* [2023] EWHC 142

⁵ PPG paragraph: 013 Reference ID: 17a-013-20230726

⁶ PPG paragraph: 014 Reference ID: 17a-014-20140306

choose which permission, if any, to implement. The PPG advises that the new permission should restate the conditions imposed on the earlier permission that continue to have effect.

19. The parties have provided an agreed update of the conditions that still have effect and those that have been discharged, as well as previous conditions 9 and 10 that are covered by other legislation. Those conditions that have been discharged are worded to reflect the details that have been agreed. The time limit for beginning the development must run from the date of the original permission, so I have added that to condition 1.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed.

K. Stephens
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the 6 June 2022.
Reason: As required by Section 91 of the Town and Country Planning Act 1990 (as amended) and to avoid the accumulation of unimplemented planning permissions.
- 2) This decision relates to the following drawings: PO1B, PO2B, PO3B, PO4B, PO5B, PO6B, PO7B, PO8B, PO9B, P10B, P11B, P12B, P13B
Reason: To define the terms and extent of the permission.
- 3) No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the approved details.
Reason: In the interests of the appearance of the development and the surrounding area in accordance with Policy DP3, DP7 and DP22 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).
- 4) No construction of the external walls of the development shall commence until a sample panel of all external walling materials to be used has been erected on site, approved in writing by the Local Planning Authority, and kept on site for reference until the development is completed. The development shall be undertaken in accordance with the approved details.
Reason: In the interests of the appearance of the development and the surrounding area in accordance with Policy DP3, DP7 and DP22 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).
- 5) No piece of external joinery shall be installed or undertaken unless full details of that piece have been first submitted to and approved in writing by the Local Planning Authority. Such details shall be at full or half scale and shall include cross-sections,

profiles, reveal, surrounds, materials, finish and colour. The works shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of the appearance of the development and the surrounding area in accordance with Policy DP3, DP7 and DP22 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 6) No ducts, pipes, rainwater goods, vents or other external attachments shall be fitted or installed unless in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority. All such attachments shall thereafter be retained in that form.

Reason: In the interests of the appearance of the development and the surrounding area in accordance with Policy DP3, DP7 and DP22 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 7) No occupation shall commence until a hard and soft landscape scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- a) size, species and positions for new trees and plants,
- b) boundary treatments,
- c) surfacing materials (including roadways, drives, patios and paths),
- d) any retained planting and
- e) a detailed programme of implementation.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season either with the same tree/plant as has previously been approved, or with other trees or plants of a species and size that have first been approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: To ensure the provision of an appropriate landscape setting to the development in accordance with Policy DP1, DP3, DP4 and DP7 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 8) No occupation of the dwelling shall commence until the agricultural building shown in red on drawing number PO4B has been demolished and the site cleared to provide parking in connection with the development hereby approved and as shown on drawing PO5B. The parking shall thereafter be retained permanently.

Reason: To ensure the provision of an appropriate setting to the development and to provide satisfactory amenity for the occupiers and the provision of safe parking in accordance with Policy DP1, DP3, DP4, DP7 and DP10 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 9) The development hereby approved shall be carried out in accordance with the following details in relation to surface water drainage including infiltration testing: Drainage report by SLR Consulting Ltd dated 09.04.24 project no. 416.065225.00001 but excluding the Drainage Layout referenced in Appendix E of that document and revised Drainage Layout drawing 416.065255.00001_DL_01 Rev PO3 received 12.02.25 as approved by the LPA in its decision notice 2024/2054/APP dated 10 March 2025.

Reason: To ensure that an appropriate method of surface water drainage is installed and in the interests of flood risk management in accordance with Policy DP7, DP8 and DP23 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and section 14 of the National Planning Policy Framework.

- 10) The development hereby approved shall be carried out in accordance with those details in relation to foul drainage comprising drainage report by SLR Consulting Ltd dated 09.04.24 project no. 416.065225.00001 but excluding the Drainage Layout referenced in Appendix E of that document received 12.11.24 and revised Drainage Layout drawing 416.065255.00001_DL_01 Rev PO3 received 12.02.25 as approved by the LPA in its decision notice 2024/2054/APP dated 10 March 2025.

Reason: In order to ensure the provision of satisfactory drainage and avoid pollution of the environment in accordance with Development Policy DP8 and DP22 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 11) The development hereby approved shall be carried out in accordance with the details comprising Application form, European Protected Species Licence, and report from Nash Ecology dated 23.10.24 in accordance with those details approved by the LPA in its decision notice 2024/2054/APP dated 10 March 2025.

Reason: In the interests of the strict protection of European protected species and in accordance with Policy DP5 and DP6 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 12) The development hereby approved shall be carried out in accordance with the following details relating to replacement of bat roosts: photos showing position of bat house and bat boxes received 20.01.25 in accordance with those details approved by the LPA in its decision notice 2024/2054/APP dated 10 March 2025.

Reason: In the interests of the Favourable Conservation Status of populations of European protected species and in accordance with policy DP5 and DP6 of the Mendip Local Plan.

- 13) The development hereby approved shall be carried out in accordance with those details in relation to reptiles and amphibians comprising report from Nash Ecology dated 23.10.24 in accordance with those details approved by the LPA in its decision notice 2024/2054/APP dated 10 March 2025.

Reason: In the interests of the strict protection of UK protected and priority species and in accordance with Policy DP5 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 14) No removal of trees, hedges or shrubs or demolition of buildings or structures that impact nesting birds shall take place between 1 March and 30 September inclusive unless a scheme to protect any nesting birds has been submitted to and approved in writing by the Local Planning Authority. No works that would impact nesting birds shall be undertaken between 1 March and 30 September inclusive other than in accordance with the approved bird nesting protection scheme.

Reason: To protect nesting birds and prevent ecological harm in accordance with Policies DP5 and DP6 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 15) 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, operated, and maintained in accordance with the specifications and locations set out in 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.

Reason: In the interests of the Favourable Conservation Status of populations of European protected species and in accordance with DP5 and DP6 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014).

- 16) No development shall take place until all trees and hedgerows are protected during the works, including groundworks, by the establishment of Root Protection Areas in accordance with BS 5837:2012. The habitat situated to the west, adjacent to the development which is registered as under the Priority Habitat Inventory as Traditional Orchards shall be protected by a 10m buffer, marked by Heras fencing prior to works commencing. No materials or plant should be allowed within the buffer zone.

Reason: To ensure that the trees are protected from potentially damaging activities and in the interests of maintaining important habitat in accordance with Policy DP1 and DP5 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and BS 5837:2012, advice contained within the National Planning Policy Framework 2021 and UK Government guidance on Ancient woodland, ancient trees and veteran trees: protecting them from development 2018.

- 17) Within 3 months of the commencement of development a scheme for provision for nesting swallows shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide full details of the provision, for example within a structure providing shelter, such as an open fronted log store or bespoke box attached to the wall, along with the erection of two artificial nest cups within. The approved scheme will be implemented in full and retained thereafter.

Reason: To protect nesting birds and prevent ecological harm in accordance with DP5 and DP6 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and in accordance with Government policy for the maintenance of biodiversity as set out in the National Planning Policy Framework (170d).

- 18) No occupation shall commence until the following have been installed within the application site:

- a) One Schwegler 2F bat boxes or similar will be mounted at least 4m high above ground level on the south or east facing aspects of trees and maintained thereafter.
- b) One Vivara Pro Woodstone Nest Boxes (32mm hole version) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter.

- c) Two log piles as a resting place for reptiles and or amphibians constructed on the southern boundary.
- d) All new shrubs must be high nectar producing to encourage a range of invertebrates to the site, to provide continued foraging for bats. The shrubs must also appeal to night-flying moths which are a key food source for bats. The Royal Horticultural Society guide, "RHS Perfect for Pollinators, www.rhs.org.uk/perfectforpollinators" provides a list of suitable plants both native and non-native.
- e) A bee brick built into the wall about 1 metre above ground level on the south or southeast elevation of the dwelling.

The bat box and bird box shall be retained thereafter in perpetuity.

Reason: To provide biodiversity net gain in accordance with Policy DP5 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (Adopted 2014) and Government policy for the enhancement of biodiversity within development as set out in paragraph 180(d) of the National Planning Policy Framework.

End of conditions