



Appeal Decision

Site visit made on 2 September 2025

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 October 2025

Appeal Ref: APP/E3335/W/25/3360987

Plots 5, 6, 8, 10 and 12 Mill Meadow, Parsonage Lane, Kingston St Mary, Taunton, Somerset TA2 8HL

- 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 Mill Meadow Eco Projects Ltd against the decision of Somerset Council.
 - The application Ref is 20/24/0007.
 - The application Ref 20/2006/038 was approved on appeal, by decision dated 10 March 2008 subject to conditions.
 - The development permitted is amendment to wording of condition 06 of permission 20/2005/022 at Mill Meadow, Parsonage Lane, Kingston St Mary.
 - The conditions in dispute are Condition 1 and Condition 7, which state that:
Condition 1: The chalets shall be occupied for tourism purposes only and shall not be occupied as a persons sole or main residence. The site operator and owners shall maintenance an up to date register of the names of all owners/occupiers, including their guests of individual chalets on site and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority, and
Condition 7: Any holiday let cabin that is unoccupied for more than a 24 month period shall be demolished and/or removed including the removal of any foundations and/or floor slabs.
 - The reasons given for Condition 1 and Condition 7 are:
Condition 1: Not specified.
Condition 7: The site lies within open countryside in an attractive rural area where new development is strictly controlled by Taunton Deane Local Plan Policy S7. This permission is only acceptable for holiday use to encourage tourism in the area in compliance with Taunton Deane Local Plan Policy EC24 and the retention of the buildings for other residential uses when the holiday use ceases would be contrary to Taunton Deane Local Plan Policy S7.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 13 log cabins for holiday let at Plots 5, 6, 8, 10 and 12 Mill Meadow, Parsonage Lane, Kingston St Mary, Taunton, Somerset TA2 8HL, in accordance with the application Ref 20/24/0007, without compliance with condition numbers 1 and 7 previously imposed on planning permission Ref 20/2006/038, dated 10 March 2008 and subject to the Schedule of Conditions to this Decision.

Preliminary Matter

2. I acknowledge the description provided on planning permission Ref 20/2006/038. However, that permission was granted following an application under Section 73 ('S73') of the Town and Country Planning Act 1990, which sought to vary or remove a condition attached to an earlier permission Ref 20/2005/022. For the purposes of my Decision, I have relied on the description of the act of

development, as set out on planning permission Ref 20/2005/022, because this more accurately reflects the nature of the originally approved development.

Background and Main Issues

3. The appeal site forms part of a wider development which was initially for the erection of a number of log cabins for holiday use and through subsequent planning permissions has been extended. Some of the plots have been developed and subsequently varied through planning consents, removing the requirement for them to be used solely for holiday use. Collectively, the wider development is known as Mill Meadow.
4. The appeal before me relates to five undeveloped plots within Mill Meadow and is one of six linked appeals relating to sites at Mill Meadow that I am currently determining.
5. The application before me was submitted under S73 to remove disputed condition 1 of planning permission Ref: 20/2006/038 and disputed condition 7 which was carried forward from planning permission Ref 20/2005/022. In short, this would allow the proposed plots to be developed and retained for open market dwellings instead of those approved only for tourism use.
6. In summary, the Council's first reason for refusal says that the proposed development lies outside the designated settlement boundary, placing it within open countryside and that this location is considered unsustainable, as future residents would be heavily reliant on private motor vehicles.
7. Following the December 2024 revision of the National Planning Policy Framework ('the Framework'), the Council can no longer demonstrate a five-year housing land supply, which on the evidence available to me is about 3.1 years. Consequently, and although the Council maintains that the site is in an unsustainable location, having regard to paragraph 11(d) of the Framework, it has concluded, that the harm does not clearly outweigh the benefits of new dwellings. Therefore, the Council is no longer pursuing refusal of the proposal based on its location, provided other outstanding issues are resolved. Even so, because this is largely a matter of planning judgement for the decision maker, this remains a main issue for the purposes of my Decision.
8. Accordingly, and based on the Council's reasons for refusal, the main issues are:
 - i) Whether a S73 application can be used to vary conditions on an area which relates to part of a wider application site and whether this would conflict with the original description of development;
 - ii) Whether the removal of disputed Conditions 1 and 7 is acceptable with regard to:
 - Supporting market housing in the proposed location;
 - Flood risk; and
 - Affordable housing provision.

Reasons

The validity of the submitted S73 application.

9. Based on the information available, the current proposal relates to a smaller part of the site as approved under planning permission Ref: 20/2006/038. More precisely, it concerns a number of plots that were approved as part of the wider development. I have not been directed to any statutory provision or case law that would prohibit a S73 application from being made in respect of only a part of a site originally granted permission. Indeed, if this appeal succeeds, this will result in a new planning permission that applies specifically to the smaller site area and the identified plots within this.
10. The Planning Practice Guidance ('PPG') says that S73 cannot be used to change the description of the development. This is supported by several decisions made by the Court of Appeal Judgments including that of *Finney v Welsh Ministers & Ors* (Rev 1) [2019] EWCA CIV 1868 (Finney).
11. Planning permission Ref: 20/2005/022, included a condition which says, "the occupation of the holiday accommodation shall be restricted to bona fide holidaymakers for individual periods not exceeding 4 weeks in any total period for 12 weeks". This condition was replaced through a S73 application Ref: 20/2006/038, which was allowed at appeal. Condition 1 of the appeal permission says: "the chalets shall be occupied for tourism purposes only and shall not be occupied as a person's sole or main residence...". This change, as confirmed at paragraph 7 of the appeal decision¹, allowed the properties to be occupied as second homes for unlimited period, provided the occupant had a primary residence elsewhere.
12. It follows, from *Finney*, that where amending a condition would result in a conflict between the new condition and the description of the development, that the particular amendment is beyond the powers under S73 and cannot be made. A fresh planning application is instead required. An amendment can only be made provided the new condition does not fundamentally alter the proposal originally granted permission. As already stated, the planning permission granted under Ref: 20/2005/022, was for the erection of 13 log cabins for holiday lets.
13. As approved, the existing plots fall within the C3 use class of the Use Classes Order and are dwellinghouses, albeit with a condition stating that they should be occupied for tourism/second home use. By removing the occupancy condition the property can be occupied as an unencumbered dwellinghouse. Notwithstanding this, if the appeal succeeds, there is no planning requirement which would preclude the use of the proposed properties to be occupied as second homes.
14. The term "log cabin" used in the development description on the original permission gives a misleading impression of the nature of the proposed dwellings. Based on the dwellings already constructed at Mill Meadow, these are of substantial and permanent construction. As such, their designation as holiday accommodation under the original approval does not affect their construction standards or their suitability for use as primary dwellings under the current proposal. The same applies for the proposed dwellings.

¹ APP/0315/A/07/2048306

15. Given the above, the S73 application does have the ability to amend the disputed conditions for selected plots that formed part of a wider development site. Furthermore, the proposed residential use does not conflict with the approved second home use. Consequently, the proposal can be determined under a S73 application.

Suitability of proposed location

16. There is no dispute between the main parties that the appeal site is outside of settlement boundaries defined under Policy SP1 of the Taunton Deane Core Strategy 2011 – 2028 Development Plan Document, September 2012 ('CS'). Therefore, the location of the appeal site is treated as countryside for planning policy purposes. Policy KSM9 of the Kingston St Mary Neighbourhood Plan ('NP'), only supports new build housing within the settlement limits.
17. Policy SB1 of the Taunton Deane Adopted Site Allocations and Development Management Plan (2016) ('DMP') says that in order to maintain the quality of the rural environment and ensure a sustainable approach to development, proposals outside of settlement boundaries will be treated as open countryside. It further says that such proposals will be assessed against CS policies CP1, CP8 and DM2 unless it accords with a specific development plan policy. Policy CP8 of the CS, largely relates to environmental matters and is not directly relevant to this main issue.
18. CS Policy DM2 specifically supports community uses, business use, holiday and tourism, non-residential agriculture and forestry buildings, replacement dwellings, affordable housing, conversion of existing buildings and essential utilities infrastructure. As a result, and although this Policy does not specifically exclude residential development, this does not offer specific support for the proposal.
19. Policy CP1 of the CS says that development proposals should contribute to a sustainable environment and, among other objectives, minimise the need to travel through strategic locational choices. In support of this, and with regard to accessibility, Policy A5 of the DMP requires that residential developments be situated within walking distance of essential services and facilities. Specifically, acceptable walking distances are defined as up to 400 metres to bus stops and up to 800 metres to local shops.
20. Policies SP1 of the CS, SB1 of the DMP and Policy KSM9 of the NP, appear more restrictive than the Framework, particularly in relation to development outside defined settlements. Nevertheless, when taken together, these policies form the areas spatial strategy and support key principles such as reducing the need to travel through strategic locational choices, promoting suitable rural uses, and ensuring new residential development is well-connected to essential services and facilities. These aims are consistent with the Framework's overarching goal of fostering sustainable, inclusive, and well-integrated communities.
21. The village of Kingston St Mary does offer some amenities, including a primary school, village hall, post office, public house and church. While there is a permissive path through "The Spinney" Forest to the northeast of the appeal site towards this village, I do not consider this route suitable for use during inclement weather or for those with mobility issues. A bus stop is located about 300 metres from the entrance to Mill Meadow. Nevertheless, the walk to this bus stop is along

a rural lane with limited lighting and pavements and therefore does not appear to be particularly safe for walking.

22. Although the site is located on the designated Taunton Deane Cycle Route, I have limited information regarding the quality of this. As such, I cannot be certain that this route is suitable for all cyclists, including the elderly.
23. The appellant advises that the site is within 20 minutes of Taunton by bus. However, the bus service from Kingston St Mary operates only every two hours on weekdays. This level of service is insufficient to support regular, reliable access to employment, education, healthcare, and shopping. Moreover, access to the bus service from the appeal site is via roads, which are largely designed for vehicular traffic. Overall, this route is unattractive and potentially unsafe for pedestrians, further reinforcing car dependency.
24. While the site may be 10 minutes from Taunton by car, this undermines the local and national planning policy aims to reduce reliance on private vehicles.
25. In light of the above, I do not consider the site's location to be easily accessible and therefore the occupiers of the development would be largely reliant on private vehicles to access day to day services. It follows from this that the site is not suitable for market housing development with regard to the spatial strategy for the area.
26. As previously noted, the plots subject of this appeal have been approved for use as second homes. According to the appellant's submissions, second homeowners often use such properties in a similar fashion to their main residences, albeit in a different location. However, it is important to recognise that permanent residents typically require regular access to essential day-to-day services such as healthcare, employment, education, and local amenities. These needs are generally less frequent or absent in the case of second home occupation. As a result, while the appellant suggests there may be minimal differences in traffic patterns and journey destinations, the nature and frequency of trips associated with permanent residency are likely to be more intensive and service-oriented than those generated by second home use.
27. As such, the proposal is contrary to the requirements of policies CP1, SP1 and DM2 of the CS, policies A5 and SB1 of the DMP, and Policy KSM9 of the NP.

Flood Risk

28. Based on the information before me, the appeal site is located within fluvial Flood Zones 2 and 3 (medium and high risk, respectively). In accordance with the Framework: Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. The Framework goes on to say that: 'A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding.'
29. There is some dispute between the main parties as to whether a sequential test is necessary for the proposal. Irrespective of this, the PPG has been recently amended and says that: The sequential test should be applied to 'Major' and 'Non-

major' development proposed in areas at risk of flooding, as set out in paragraphs 173 to 174 of the National Planning Policy Framework. Paragraphs 175, 176 and 180 set out exemptions from the sequential test. In applying paragraph 175 a proportionate approach should be taken. Where a site-specific flood risk assessment demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied.

30. In this case, a site-specific Flood Risk Assessment has been submitted. This confirms that the proposed dwellings would be constructed with finished floor levels raised 600 mm above predicted flood levels. This elevation accounts for extreme flood events and future climate change, helping to ensure the homes remain safe. The use of Heli Pile foundations will allow water to pass beneath the buildings, further reducing flood risk.
31. Some plots, especially Plot 12 could experience surface water depths between 600 mm and 900 mm during a flood event. Other plots (such as Plots 5, 6, 8, and 10) may see depths of 300 mm to 600 mm. However, the flood protection measures designed for river flooding will also help mitigate surface water risks.
32. A nearby watercourse 'Nursery Stream' is identified as having a high risk of surface water flooding. Even so, this flows beneath the road via a culvert that was upgraded in 2017/2018. The new culvert, increased capacity by approximately 50%, which is likely to reduce flood risk in the area. Furthermore, the submitted Unilateral Undertaking ('UU') includes an obligation in respect of the maintenance of Nursery Stream. This obligation is necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. This accords with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended).
33. The main access route, Parsonage Lane, lies within Flood Zone 1, indicating a low risk of flooding. This means safe access and exit should be possible with adequate flood warning. In the event of sudden flooding, residents would have access to a mezzanine level within the buildings, located 2.5 metres above the floor level and above predicted flood levels. I understand a Flood Evacuation Plan is in place, and residents would be encouraged to register for the Environment Agency's flood warning service.
34. I am also mindful that the plots which are the subject of this appeal already have consent to be occupied as second homes. These are typically unoccupied for periods of the year. As a result, the new dwellings would introduce a more permanent pattern of occupancy, allowing residents to be better informed, prepared, and responsive to flood warnings,
35. For the reasons outlined above, and even in the absence of a Sequential Test, the proposal is considered safe for future residents and is unlikely to increase flood risk elsewhere. Accordingly, the proposal does not conflict with Core Strategy policies CP1 and CP8. Among other objectives, these policies seek to steer new development away from areas at risk of flooding, including those that may become

vulnerable due to climate change and promote the incorporation of flood-resilient design and construction measures.

Affordable housing

36. Policy CP4 of the CS, seeks to deliver around 4000 new affordable housing units. A target of 25% of new housing should therefore be in the form of affordable units over the Plan Period. Therefore, affordable housing is sought on sites of 5 or more dwellings. The Council's Housing SPD, adopted May 2014 says: Affordable Housing may be secured via on-site or off-site affordable housing provision, whether provided in-kind or an equivalent financial contribution.
37. Because Mill Meadow was originally granted planning permission for holiday accommodation, this was not subject to affordable housing requirements. As already stated through subsequent planning permissions, several individual units are no longer restricted to holiday use and have been approved for full residential occupation. In this context, the Council considers that the cumulative effect of these permissions alongside other applications and appeals relating to Mill Meadow has resulted in the rural affordable housing threshold being exceeded. In accordance with paragraph 65 of the Framework, policies in designated rural areas may apply a lower threshold of five units or fewer. The Council therefore maintains that the scale of residential development now proposed across Mill Meadow triggers the requirement for an affordable housing contribution.
38. In respect of the above, I have been referred to case law² that provides three criteria to determine and assess the piecemeal development of sites or/and aggregation of sites for the purposes of applying an affordable housing policy threshold. The three criteria include: a. the ownership of the site; b. whether the land could be considered to be a single site for planning purposes; and c. whether the development should be treated as a single development. Whilst these criteria are not determinative, they are useful in forming an overall planning judgement as to whether proposals would be aggregate development or not.
39. With regard to the first and second criterion, while it is acknowledged that Mill Meadow has been subdivided into individual plots since the original permissions in 2005 and 2006, this appeal relates to five plots that are in the same ownership and are being considered collectively. This suggests a level of coordination that undermines the argument for treating them as entirely independent planning units.
40. Regarding the final criterion, irrespective of whether the proposal before me should be considered a single development, this involves multiple plots and this collective scale triggers the development plan requirement for affordable housing contributions.
41. Drawing on the above reasons, the proposal is required to make a contribution towards affordable housing. To this end, the submitted UU, includes an obligation to provide an affordable housing financial contribution in accordance with the Council's requirements.
42. Based on the evidence before me, I am satisfied that the affordable housing contribution in the submitted UU is necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable

² R (Westminster City Council) v First Secretary of State & Brandlford Limited [2003] JPL 1066

in scale and kind. This accords with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended). Therefore, the proposal accords with CS Policy CP4, which seeks to ensure that developments of this scale contribute appropriately to affordable housing provision.

Other Considerations

43. Because the Council is currently unable to demonstrate a 5-year supply of housing land, Paragraph 11d) of the Framework is engaged.
44. If the appeal were to succeed the proposal would support the provision of 5 new dwellings including a contribution towards affordable housing. This would support the governments aims of boosting the supply of homes and supporting a range of housing. Occupiers of the development would support local services and contribute to the economy. As such, there would be some social and economic benefits. Given the scale of the proposal (5 dwellings). This, and the benefits associated with it attract more than limited weight.

Conditions

45. The Planning Practice Guidance states that decision notices granting planning permission under Section 73 of the Act should repeat relevant conditions from the original permission unless those conditions have already been discharged. S73 is drafted broadly and, in addition to reviewing the disputed condition, provides the authority to impose new conditions, omit previously imposed ones, or modify existing conditions.
46. The Inspector allowed planning permission Ref 20/2006/038, subject to disputed condition 1 and all the other conditions on permission Ref 20/2005/022, which were still subsisting and capable of taking effect. Because these were not specifically listed in the appeal decision, I have had regard to all these in determining this appeal.
47. As part of the original development has already commenced, it is not necessary to include the standard implementation condition (1) of planning permission Ref: 20/2005/022. However, in the interests of certainty I have specified a new condition identifying the site of the development and plans and drawings submitted during the application process.
48. Since it is unclear whether conditions 2, 4, 5, 10 and 14 of planning permission Ref: 20/2005/022 have been discharged, I have reimposed them for the same reasons as originally stated. If they have already been discharged, this is a matter for the main parties to clarify. I have also restated those undisputed conditions that are still subsisting and capable of taking effect.
49. Condition 8 of planning permission Ref: 20/2005/022, relates to visibility splays and refers to an unspecified drawing. Therefore, this condition is unenforceable and I have not specified this for the purposes of my Decision.
50. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

Planning Balance and Conclusion

51. The proposal would introduce open market dwellings in a location which is not easily accessible and is contrary to the spatial strategy for the area. Therefore, the occupiers of the development would be heavily reliant on private vehicles to access day to day services. That said, when compared to the approved second home use, the extent of this is likely to be modest. As such, any harm resulting from the proposal would be limited. On the other hand, the proposal would provide benefits which are consistent with the Framework and these are afforded more than limited weight.
52. As a result, when assessed against the policies in the Framework, the adverse impacts associated with the proposal (removal of disputed conditions 1 and 7), would not significantly and demonstrably outweigh the benefits arising from this. Consequently, the presumption in favour of sustainable development applies and this indicates that planning permission should be granted, and the appeal is allowed.
53. Accordingly, condition 1 and 7 of planning permission Ref: 20/2006/038 are not necessary.

M Aqbal

INSPECTOR

Schedule of Conditions

- 1) This permission relates to the following approved plans and drawings: Location Plan - Plan Reference Number: TQRQM24066065322756, dated 6 March 2024 and Proposed Layout Drawing no. 12. Rev D, House Type A Cross Section, House Type A External Front, House Type A External Front 2, House Type A External Rear, House Type A External Rear 2, House Type A Ground Floor, House Type A First Floor, Ark 1 dated 13.4.2023, Ark 2 dated 13.4.2023, Ark 3 dated 13.4.2023 and Ark 4 dated 13.4.2023.
- 2) Prior to any above groundworks commencing in association with the development plots hereby permitted, details of all existing trees on the development site shall be submitted to and approved in writing by the Local Planning Authority. No trees identified for retention shall be felled, lopped, topped, lifted, or otherwise disturbed without the prior written consent of the Local Planning Authority.
- 3) (i) A scheme for the planting of trees, shrubs and hedges, including details of species, siting and numbers to be planted and a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority prior to the completion of the first dwelling hereby permitted.
(ii) The approved scheme shall be implemented in accordance with approved timescale, or as otherwise agreed in writing by the Local Planning Authority.
(iii) For a period of five years following the completion of the planting scheme, all planted trees, shrubs and hedges shall be protected and maintained to the satisfaction of the Local Planning Authority. Any specimens that fail to establish or die shall be replaced with plants of similar size and species, or as otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the construction of the emergency spillway for the western stream, details of this and bank levels shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter, the emergency spillway shall be constructed in accordance with the approved details.
- 5) Prior to their installation, details and samples of materials to be used on all external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved materials and thereafter so retained.
- 6) Prior to their installation, details of all boundary walls, fences or hedges forming part of the development (including a timetable for implementation) shall be submitted to and approved in writing by the Local Planning Authority. Any approved wall, fence or hedge shall be erected/planted in accordance with the approved timetable and thereafter maintained.
- 7) Prior to their installation, details of any soakaways (including a timetable for implementation) shall be submitted to and approved in writing by the Local Planning Authority. Any such soakaways shall be installed in accordance with approved details and retained for the life of the development.

- 8) The development hereby permitted shall be undertaken in accordance with the approved flood risk mitigation measures / recommendations set out in the Flood Risk Assessment, dated 30 May 2024. Any variation to the approved flood risk mitigation measures / recommendations shall be agreed and approved in writing by the Local Planning Authority, prior to their implementation.
- 9) Badgers are known to be active in the vicinity of the approved development site. All contractors and site personnel shall be briefed on the presence of badgers and the relevant legal protections under the Wildlife and Countryside Act 1981 (as amended) and the Protection of Badgers Act 1992. As a precautionary measure, any open excavations shall be securely covered overnight or fitted with escape ramps to prevent accidental harm to wildlife.
- 10) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any subsequent order amending or revoking and re-enacting that Order) there shall be no addition or extension to the buildings hereby permitted (including the insertion of dormer windows) unless an application for planning permission is first submitted to and approved by the Local Planning Authority.
- 11) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any subsequent order amending or revoking and re-enacting that Order), there shall be no further building, structure or other enclosure constructed or placed on the development site unless an application for planning permission is first submitted to and approved by the Local Planning Authority.
- 12) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any subsequent Order amending or revoking and re-enacting that Order), no gate, fence, wall or other means of enclosure shall be erected on the development site unless an application for planning permission is first submitted to and approved by the Local Planning Authority.