

## Appeal Decision

Site visit made on 19 December 2016

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2<sup>nd</sup> February 2017

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### Appeal Ref: **APP/R3325/W/16/3155578**

### **Plots 1-5, Langdons Way, Tatworth, Chard TA20 2TH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Sam Lowings (Bikebins.com Ltd) against the decision of South Somerset District Council.
  - The application Ref 16/01364/S73A, dated 21 March 2016, was refused by notice dated 8 July 2016.
  - The application sought planning permission for the erection of 6 No. dwellinghouses with garages and associated parking without complying with a condition attached to planning permission Ref 13/03067/FUL, dated 11 February 2014.
  - The condition in dispute is No 9 which states that:  
*The proposed dwellings hereby permitted shall not be occupied until traffic calming measures have been implemented to reduce the speed of traffic. Details of this are to be approved in writing by the Local Authority. Such works shall then be fully constructed in accordance with the approved details, to an agreed specification before the development is first brought into use.*
  - The reason given for the condition is:  
*In the interests of highway safety and to accord with Policy ST5 of the South Somerset Local Plan.*
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 6 No. dwellinghouses with garages and associated parking at Plots 1-5, Langdons Way, Tatworth, Chard TA20 2TH in accordance with the application Ref 16/01364/S73A, dated 21 March 2016 without complying with condition No 9 set out in planning permission No 13/03067/FUL, dated 11 February 2014 by the South Somerset District Council, but otherwise subject to the conditions set out in the Annex to this decision.

### Procedural matter

2. The development has been partly carried out, and the condition in dispute has been breached. I shall therefore deal with the proposal as one made under Section 73A of the Act, for development already carried out.

### Main Issue

3. The effect of removing or varying the condition on highway safety.
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## Reasons

4. The permission related to the erection of 6 houses, subsequent to which permission was granted for Plot 6 to be used as gardens for other plots, thereby providing only 5 dwellings. Two of the approved dwellings have been completed.
5. The Council, along with the Highway Authority, wishes to see traffic calming measures instituted because the visibility obtainable from the drives to the houses is said to be insufficient for drivers to emerge onto Langdons Way in a safe manner where vehicle speeds exceed 20 mph. The appellant says that the Highway Authority has failed to respond to communications from the appellant about traffic calming measures, or to offer appropriate advice. This is denied by the Highway Authority, but in any event, even if it were the case, I cannot infer that it demonstrates a lack of commitment on the Highway Authority's part to achieving the measures subject of the condition in dispute.
6. The site lies on the inside of a bend in Langdons Way, on the brow of a hill. The incline and the restricted forward visibility discourages speeding, and on my visit I noted that there were parked vehicles to the north of the appeal site which obstructed visibility of southbound traffic.
7. The appellant has carried out speed surveys over different days and at different times using a radar gun following instruction from a qualified highway engineer, who later processed and evaluated the results. He confirms that the recordings were undertaken in accordance with TA 22/81 *Vehicle Speed Measurement on All Purpose Roads*. The survey results showed that the two-way 85<sup>th</sup> percentile speed of traffic passing the appeal site was 20.59 mph. The highest 85<sup>th</sup> percentile figure was for mid-evening southbound traffic of 22.91 mph.
8. The appellant also recorded the speeds of traffic along Fore Street where a speed hump has been installed and found that the 85<sup>th</sup> percentile speeds were very similar to those recorded outside the appeal site.
9. I have regard to the email from Mr Doug Allen, the local Community Speed Watch (CSW) Co-Coordinator, who was of the view that speeds along Langdons Way were unlikely to exceed 20-25 mph. He also referred to a CSW speed survey undertaken "a few years ago" which recorded average speeds at 21 mph. However, I have no details of where or exactly when that survey was carried out, and this limits its usefulness. I attach greater weight to Mr Allen's own views in the light of his considerable experience with policing and in his capacity as a volunteer Speedwatch Coordinator, which are backed by the district councillor with experience of the site who supports the removal of the condition. Both Mr Allen's opinion and the speed survey to which he refers reinforce the appellant's own evidence.
10. Neither the Council nor the Highway Authority have provided any speed evidence. Whilst the appellant's speed survey was not undertaken by a qualified professional, I consider that this is an insufficient reason to cast doubt on the findings. I therefore consider that the survey indicates that speeds are sufficiently close to the desired speeds which the Council would wish to achieve to ensure that the accesses would be safe. In this regard, I have taken into account the advice in paragraph 10.5.9 of Manual for Streets 2, which says that based on research referred to in the Manual, unless there is local evidence to

the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem.

11. I have taken into account the views of local residents who wish to see the traffic calming measures installed, but on the basis of the evidence before me, there is insufficient justification to do so.
12. I therefore conclude on the main issue that the removal of the condition would not result in material harm to highway safety, or conflict with South Somerset Local Plan Policy TA5 which deals with transport and development.

### **Conditions**

13. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council has provided me with a list of suggested conditions which appear to have been adapted to take into account the changed circumstances since the previous grant of permission. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

### **Conclusion**

14. For the reasons given above, I conclude that the appeal should be allowed.

*JP Roberts*

INSPECTOR

## ANNEX

- 1) Notwithstanding the time limits given to implement planning permission as prescribed by Sections 91 and 92 of the Town and Country Planning Act 1990 (as amended), this permission (being granted under section 73A of the Act in respect of development already carried out) shall have effect from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No.'s; 3640-01, 3640-02, 3640-03, 3640-04, 3640-05, 3640-06, 3640-07, 3640-08, 3540-09, 3640-10 and 3640-11 received 18 July 2013; and 3640-24 received 29 January 2014.
- 3) All planting, seeding, turfing or earth moulding comprised in the approved details of landscaping, as detailed on plans and written submission dated 24 September 2014, shall be carried out in the first planting and seeding season following the occupation of either of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion 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.
- 4) The development hereby approved shall be carried out in accordance with the details approved by letters 22nd September 2014 and 12 November 2015, in relation to conditions 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 and 21 of decision letter dated 11 February 2014 Ref. 13/03067/FUL, unless otherwise agreed in writing by the Local Planning Authority. Such details, where specified in the aforementioned conditions, shall be completed before the dwellings hereby permitted are first brought into use and permanently retained and maintained thereafter unless otherwise agreed in writing.
- 5) All existing hedges or hedgerows shall be retained, unless shown on the approved drawings as being removed. All hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site to the satisfaction of the Local Planning Authority in accordance with the recommendations in British Standard 5837 1991. Any part(s) of hedges or hedgerows removed without the Local Planning Authority's consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following completion of the approved development shall be replaced as soon as is reasonably practicable and, in any event, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed in writing with the Local Planning Authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no garages, sheds or outbuildings shall be erected.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and

- re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no additional windows, including dormer windows, or other openings (including doors) shall be formed in the dwellings hereby permitted, or other external alteration made without the prior express grant of planning permission.
  - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions to the dwellings hereby permitted without the prior express grant of planning permission.
  - 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) no means of access, either pedestrian or vehicular, of any kind shall be formed onto the lane/footpath to the west of Plot 1 or to any designated public right of way adjoining or part the application site without the express grant of planning permission by the Local Planning Authority.