



Appeal Decision

Site visit made on 9 April 2015

by **Sara Morgan LLB (Hons) MA Solicitor (Non-practising)**

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

Decision date: 27 April 2015

Appeal Ref: APP/R3325/X/14/2220698

Walnut Tree Farm, Lyatts, Hardington Moor, Yeovil BA22 9NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs M Partridge against the decision of South Somerset District Council.
 - The application Ref 13/03897/COL, dated 23 September 2013, was refused by notice dated 26 March 2014.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is residential dwelling and associated garden land.
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Decision

1. The appeal is dismissed.

Preliminary

2. The planning statement submitted in support of the application the subject of this appeal requested a LDC for the following description: "the continued use of building and residential curtilage as a single dwelling house on land at Walnut Tree Farm, Lyatts Poultry Farm, Hardington Mandeville". However, it is clear from the submissions that the application seeks a LDC which would permit the dwelling to be occupied free of the agricultural occupancy condition subject to which the dwelling was permitted. I shall consider the appeal on that basis.

Main Issue

3. The main issue is whether the Council's refusal to issue a LDC was well-founded. That turns on whether the dwelling at Walnut Tree Farm was constructed pursuant to a planning permission granted in 1997 subject to an agricultural occupancy condition, or whether it was constructed in breach of a condition attached to that permission, so as to have been unlawful. The dwelling was constructed more than four years ago and has been occupied without material interruption for over four years since then, but apparently in accordance with the agricultural occupancy condition. If the dwelling was unlawful, it would now be immune from enforcement action and the agricultural occupancy condition would not apply.

Reasons

4. On 21 March 1997 the Council granted planning permission for the erection of the dwelling house and garage on the appeal site (reference 96/01839/FUL). That permission was subject to conditions.
5. A number of the conditions required development not to be commenced until details of certain matters had been submitted to and approved in writing by the district planning authority. Condition 4 read: "In the interests of visual amenity, no approval is hereby granted to the internal ground floor levels of the house and garage specified on the submitted drawing (Drawing No 4071-6 dated August 1996). No development shall be commenced until revised details of internal ground floor level(s) have been submitted to and approved in writing by the district planning authority. The development shall not be carried out other than in accordance with the internal ground floor level(s) so approved."
6. From the documents submitted with the appeal, it appears that development commenced before three of the pre-commencement conditions had been satisfied. Two of those conditions (condition 6 relating to landscaping and condition 10 relating to drainage) were discharged in writing by the local planning authority some time after building work had commenced on the site. However, the appellant says that there is no written evidence from either the Council's files or the appellant's records that condition 4 was ever discharged.
7. Drawing 4071-6 showed the internal floor level of the property to be 10.500. The details approved in relation to drainage showed an internal floor level of 10.425. Recent measurements have shown that the actual internal floor level of the dwelling is 10.330.
8. A long line of judicial authorities¹ has established that if development is carried out in breach of a condition attached to a planning permission which is required to be satisfied before any development begins on site, and if that condition "goes to the heart of the permission", then the development is not authorised by that planning permission. One exception to this general rule is where any details required by the condition to be approved are approved subsequently.
9. There appears to be no dispute that condition 4 is capable of being a "condition precedent" which is required to be satisfied before any development takes place. That is clear from the explicit prohibition in the condition on any development taking place until the internal floor levels have been submitted to and approved in writing by the Council.
10. A condition relating to the floor levels of the permitted building is also capable of "going to the heart" of the permission, bearing in mind that levels would have a major bearing on the prominence of the finished building in the landscape. The Council has not produced any evidence to show that the "levels" condition was formally discharged.
11. On 7 November 1997 a letter was sent to the Council seeking approval for the intended foul water system for the dwelling. That letter enclosed a plan showing the installation of a treatment plant. It also contained a great deal of detail about levels and spot levels of existing natural ground around the site of

¹ From *F. G. Whitley & Sons Co. Ltd v The Secretary Of State for Wales and Clwyd CC* Court of Appeal 24 March 1992 to *Greyfort Properties Ltd v SSCLG and Torbay Council* [2011] EWCA Civ 908

the house. It gave the house and garage floor levels, showed how the house would be linked to the treatment plant, and gave the invert levels of the treatment plant. By letter of 29 January 1998 the Council approved the installation of the treatment plant as a means of foul water disposal and indicated that condition 10 could be regarded as satisfied with regard to the submission and approval of those details.

12. In my view, the Council was implicitly approving the floor levels shown on that plan when it approved the drainage details. After all, the floor levels of the dwelling need to be reflected in the drainage scheme in order to make the drainage system work. It is difficult to see how the Council would have been able to argue that the floor levels had not been approved subsequently, in view of the details shown on this approved plan, despite the 29 January 1998 letter not referring to approval of levels or discharge of condition 4.
13. The appellant has argued that the Council's object in imposing condition 4 was to secure a much lower floor level for the building than either shown on the drainage details or as eventually built, so that the Council would not have approved the levels shown on the drainage details. It certainly appears from correspondence in July 1997 that a significant reduction was envisaged. But the issue is whether the approval given to drainage details also approved levels. In my opinion, in the light of the information provided, it did.
14. As it happens, the dwelling has been constructed with lower internal floor levels than shown in the approved drainage details. But there is no suggestion that the dwelling fails to comply with the approved drawings and details in any other way. I consider that the difference between the 10.425 shown in the approved drainage details and the as constructed 10.330 is not materially different from what was approved, and is de minimis.
15. I therefore conclude that the dwelling the subject of the appeal was constructed pursuant to the 1997 permission and is subject to the agricultural occupancy condition attached to that permission.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of building and residential curtilage as a single dwelling house on land at Walnut Tree Farm, Lyatts Poultry Farm, Hardington Mandeville without complying with the agricultural occupancy condition attached to planning permission 96/01839/FUL was well-founded. The appeal should therefore fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Sara Morgan

INSPECTOR

Appeal Decision

Site visit made on 23 March 2015

by **Michael J Hetherington BSc(Hons) MA MRTPI MCIEEM**

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

Decision date: 15/04/2015

Appeal Ref: APP/R3325/A/14/2224839

Land off Long Furlong Lane, East Coker, Yeovil, Somerset, BA22 9LW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Avalon Estates Ltd against the decision of South Somerset District Council.
 - The application ref. 14/01266/OUT, dated 18 March 2014, was refused by notice dated 2 July 2014.
 - The development proposed is: residential development, new vehicular access and associated works.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Avalon Estates Ltd against South Somerset District Council. This application is the subject of a separate decision.

Preliminary Matter

3. The application form indicates that all matters of detail except access are reserved for future determination.

Main Issues

4. The South Somerset Local Plan (2006-2028) (LP) has now been adopted. It is not disputed that the Council can demonstrate a five year supply of housing land, as is required by the National Planning Policy Framework (the Framework). Accordingly, the main issues in this appeal are:
 - (a) whether the proposal would accord with the adopted LP's approach to development in rural settlements;
 - (b) the effect of the proposal on the area's character and appearance;
 - (c) its effect on highway safety; and
 - (d) whether the proposal would accord with national policy in respect of Grade 1 agricultural land.

Reasons

Development in Rural Settlements

5. LP policy SS2 seeks to strictly control development in rural settlements, limiting such development to a number of specific types including proposals that meet identified housing need, particularly for affordable housing. It is intended that the appeal scheme would contain a proportion of affordable housing, as set out in the submitted unilateral undertaking, which also makes provision for a contribution to be made towards off-site recreational or leisure facilities. Policy SS2 also requires that proposals for housing development should only be permitted in rural settlements that have access to two or more key services, as listed in a supporting paragraph. This is satisfied by East Coker, which has access to a range of facilities including a public house and primary school.
6. As has been identified in other appeal decisions (for example in July 2014 at Keinton Mandeville ref. APP/R3325/A/14/2217950), policy SS2 cannot be considered to necessarily rule out development outside a settlement boundary. Unlike policy ST3 of the previous Local Plan, policy SS2 does not refer to the defined development areas of settlements. In the Keinton Mandeville decision, the Inspector noted that, in principle, development outside the settlement boundary could be appropriate even if a five year land supply were to be in place given the contribution that it would make to the provision and choice of housing in the District.
7. In the present case, the recently adopted LP makes provision for an urban extension containing approximately 800 dwellings to the south of Yeovil. The land concerned lies within the Parish, although it is separated from the village of East Coker. It is therefore the case that a significant amount of new housing is likely to be built within the site's wider locality. While the appellant contends that the urban extension is intended to meet the needs for housing and infrastructure relating to Yeovil, it does not seem to me that the LP provides such a clear distinction. Yeovil is identified as the prime focus for development within the District: such development is therefore intended to meet an element of District-wide needs as well as the town's own requirements.
8. It is accepted that the parish of East Coker is likely to have particular housing needs over and above the new housing that has been explicitly provided for in the LP. However, the supporting text to policy SS2 (paragraph 5.31) states that proposals coming forward under that policy "should be based upon meeting the needs of the Rural Settlement in question, and should undergo early engagement and preferably demonstrate support from the community, consistent with the Government's 'localism' agenda". Paragraph 5.32 adds that "given that Policy SS2 is starting from the premise of no development unless certain conditions are met, the evidence for development being of a strong sustainable nature is particularly important to provide. Furthermore the local community is best placed to determine local need and what will make their settlement more sustainable and there will be an expectation that development proposals have either come from the local community, or been tested and checked through local consultation and engagement."
9. In the present case, it has not been demonstrated that the scheme is based on meeting a particular need that relates to the settlement concerned. At the time that the planning application was submitted, the Council was unable to

demonstrate a five year land supply. The planning statement accompanying the application was clearly framed in that context. However, as noted above, this is no longer the case. Substantial evidence about the scale and type of East Coker's housing needs, arising from or tested by the local community, has not been presented. While work has been carried out for a Neighbourhood Plan (NP), the plan itself has neither been completed nor submitted for examination. The findings of the Parish survey relate (among other matters) to preserving the 'rurality' of the area and seeking development by way of small incremental schemes. However, these do not amount to a statement of planning policy in respect of the appeal site or indeed the rest of the Parish.

10. Given that it would be unreasonable to require consistency with an NP that has yet to be completed, the absence of explicit support for the appeal scheme in an NP does not weigh against the proposal. However, policy SS2 also requires developments to generally have the support of the local community following robust engagement and consultation. In the present case, this requirement has not been satisfied. The appeal scheme is objected to by East Coker Parish Council, the local residents' group and a substantial number of local residents.
11. Drawing the above together, I consider that while the appeal scheme would contribute to the provision and choice of new housing within the District, including the provision of affordable housing, it has not been demonstrated that it would meet an identified housing need in respect of the settlement concerned. Notwithstanding the absence of a finalised NP, the scheme does not generally have the support of the local community. Accordingly, it would conflict with LP policy SS2. I therefore conclude that the proposal would be contrary to the adopted LP's approach to development in rural settlements.

Character and Appearance

12. The appeal site comprises a field adjoining a residential estate (Broadacres). To the north and east the site is bounded by domestic gardens and the turning head of a cul-de-sac. To the south and west lies agricultural land, with generally open views towards the Coker ridge. Boundary treatments on the southern and western edges of the site afford only a limited amount of visual containment. The site is therefore clearly seen as part of the wider countryside that forms the landscape setting of the village.
13. The Council has clarified that the relevant part of its refusal reason relates to visual character, with particular reference to long views into the site and the extension of the built form into the countryside. The appellant refers to the Council's Peripheral Landscape Study for Yeovil, which includes the site within an area of 'low visual sensitivity' with a 'moderate capacity to accommodate built development'. In commenting on the planning application, the Council's Landscape Architect noted that the site was visible in long views from the ridge to the south, adding that it was not a large component of those views and moreover that it was seen in such views against the backdrop of village house forms. He acknowledged that the proposal would result in an erosion of the countryside as a result of domestic expansion into agricultural land: however, he felt (in summary) that the impact would go little beyond that, as the change to landscape character would 'not extend far beyond the site bounds'. He concluded that while he had 'reservations' about the principle of the development, he felt that the scheme would not create a significant landscape impact. As such he felt that there was no basis to raise a landscape objection.

14. In refusing planning permission for the development, Committee members gave greater weight to the scheme's effect on views from south, including views from the Coker ridge. My own observations broadly support these concerns. Given the limited screening on the site's southern boundary and the open nature of the countryside to the south, it seems to me that the appeal scheme would have a greater visibility in such views than the Council's landscape architect suggests. Although the new houses would be seen in the context of the existing settlement, they would act to extend the built form of that settlement into the open countryside. This effect would be visible from a number of locations along the Coker ridge, for example from the lane running south-east from West Coker and in the vicinity of Hatherstone Wood.
15. More local views would also be materially affected: for example, views across open countryside from the above-noted cul-de-sac turning head, which extend through the site to the countryside beyond, would be curtailed. The village's countryside setting would be diminished. Taken together, these factors would cause material landscape harm. I therefore conclude that the area's character and appearance would be harmed. The resulting effect would neither conserve nor enhance the landscape character of the area, as is required by policy EQ2 of the recently adopted LP. It would therefore conflict with that policy.

Highway Safety

16. The proposed site access would be formed at the point where Long Furlong Lane makes a right-angled turn to join a lane that runs south to Skinners Hill Farm. The Council has clarified that its concerns relate to the width of the lane to the farm, the need for the Transport Assessment to consider movements throughout the day (not just at peak times) and the details of the submitted swept path analysis for a refuse vehicle entering the site.
17. It is proposed that Long Furlong Lane would be widened from the above-noted bend to its junction with Broadacres. A footway would be added on the southern side of the lane, and visibility splays would be put in place in accordance with guidance in the *Manual for Streets*. Priority at the junction would be changed, so that traffic travelling from the farm would be required to give way to traffic between the appeal site and Long Furlong Lane. Bearing in mind the findings of the appellant's Transport Assessment, I have seen no substantive technical evidence to show that these arrangements would be unable to safely accommodate the increased number of vehicle movements that would be likely to occur between the site and Long Furlong Lane. The local highway authority raises no objections on highway safety grounds.
18. Given that movements on the lane to the farm would be unlikely to materially change as result of the scheme, there is no justification to require that lane to be widened. Assessment of traffic impacts based on peak hour flows is, as the appellant states, standard practice. This is because such flows are usually the busiest of the day and therefore represent a 'worst case' scenario. While the swept path analysis shows that a large refuse vehicle would overhang a short section of the footway, such an arrangement is not uncommon in residential estate layouts. Only a short section of footway would be affected. This does not amount to a materially harmful arrangement.
19. Although not part of the Council's reasons for refusal, concerns are raised by local residents about the ability of the road network in the site's wider locality to accommodate traffic arising from the appeal proposal. The part of Long

Furlong Lane to the east of the proposed widening is narrow and is used by pedestrians as well as vehicles. However, it is straight and has good visibility: as such, it is possible to see oncoming traffic and make arrangements to pass safely. Furthermore, it is not the sole vehicular access to the site. While there is some parking on Broadacres, this is not unusual on a residential road of this nature: given the road's width, it is unlikely to materially obstruct the passage of traffic. No substantive technical evidence has been presented to show that the wider road network that accesses East Coker village would be unable to safely accommodate the additional traffic arising from the appeal scheme.

20. Accordingly, I have no reason to take a different view to that of the local highway authority. I conclude that highway safety would not be materially harmed. The proposal would therefore accord with LP policy TA5.

Agricultural Land

21. The appeal site comprises Grade 1 agricultural land. The Framework includes such land within the definition of the best and most versatile agricultural land. Paragraph 112 of the Framework states that the economic benefits of such land should be taken into account and that where significant development of agricultural land is shown to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.
22. It is not disputed that the scheme would result in the loss of Grade 1 land. However, given the scale of development that is proposed (the site is some 0.7 hectares in area and an indicative housing total of 19 units is suggested), I share the appellant's view that the appeal scheme would not be 'significant' in the terms of the Framework. Therefore, while some Grade 1 land would be lost, I conclude that the proposal would not conflict with the requirements of paragraph 112 of the Framework in that respect.

Overall Conclusions

23. I have concluded above that the appeal scheme would not materially harm highway safety and that while some Grade 1 agricultural land would be lost, the proposal would not conflict with the Framework's requirements in that regard. However, these matters are outweighed by my conclusions that the scheme would be contrary to the adopted LP's approach to development in rural settlements and that the area's character and appearance would be harmed. Bearing in mind that the LP has been recently found sound, these amount to compelling objections to the development. While the scheme would contribute to the provision and choice of new housing within the District, including the provision of affordable housing, it has not been demonstrated that it would meet an identified housing need in respect of the settlement concerned. Although the proposal would support the economic dimension of sustainable development, it would conflict with the environmental dimension. Taking these matters together, the scheme would not amount to sustainable development in the terms of the Framework.
24. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should not succeed.

M J Hetherington

INSPECTOR