

18. Planning Appeals – (For Information)

Head of Service: Simon Gale, Development & Building Control
Lead Officer: Simon Gale, Development & Building Control
Contact Details: Simon.gale@southsomerset.gov.uk or (01935) 462071

Purpose of the Report

To inform Members of the appeals that have been lodged, decided upon or withdrawn.

Recommendation

That Members comment upon and note the report.

Background

The Area Chairmen have asked that a monthly report relating to the number of appeals received, decided upon or withdrawn be submitted to the committee.

Appeals Lodged

Bedwyn, Newtown Road, Huish Episcopi, Langport, Somerset TA10 9SE
Appeal against refusal (Committee decision) – demolition of existing dwelling and erection of 4 no. two bed dwellings and 8 no. three bed dwellings (GR 342302 / 127638)

16 Garden City, Huish Episcopi, Langport, Somerset TA10 9ST
Appeal against refusal (delegated) – erection of extensions on ground and first floor (GR 342559 / 127311)

Stonecroft, Love Lane, Shepton Beauchamp, Ilminster, Somerset TA19 0LS
Appeal against refusal (Committee decision) – demolition of existing dwelling and erection of 3 no. dwellings with associated parking (GR 340410/117111)

Half Moon Hotel, West Street, Somerton, Somerset TA11 6QQ
Appeal against refusal (Committee decision) – extension and conversion of inn and outbuilding into 14 No. flats (GR 348782/128570)

Appeal Allowed

Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA
Appeal against refusal (Committee decision) – removal of condition 4 of planning permission 852704 agricultural occupancy (GR 343018 / 117762)

Appeal Dismissed

Land at Somertonfield Road, Somerton, Somerset TA11 6HZ
Appeal against refusal (Committee decision) – erection of 3 no. dwellings, workshop and agricultural building (outline) (GR 346637 / 128921)

The Inspector's decision letters are attached at the end of this report.

June 2007



Appeal Decisions

Inquiry held on 6 & 7 March 2007

Site visit made on 7 March 2007

by **A J A Ritchie** MA (Oxon) LARTPI Solicitor

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date: 25 April 2007

Appeal A: APP/R3325/A/06/2016472

Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs Herrick against South Somerset District Council.
- The application Ref 05/02851/FUL is dated 21 October 2005.
- The application sought planning permission for the erection of a farmhouse, garden room and garages without complying with a condition attached to planning permission Ref 51/85/2705, dated 21 April 1987.
- The condition in dispute is No.4 which states that "the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 209 of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her, or a widow or widower of such a person".
- The reason given for the condition is that "The District Planning Authority would not have been prepared to grant permission but for this special need".

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions in the terms set out below in the Formal Decision.

Appeal B: APP/R3325/A/06/2028608

Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr & Mrs Herrick against the decision of South Somerset District Council.
- The application Ref 06/01937/S73, dated 7 June 2006, was refused by notice dated 21 September 2006.
- The application sought planning permission for the erection of a farmhouse, garden room and garages without complying with a condition attached to planning permission Ref 51/85/2705, dated 21 April 1987.
- The condition in dispute is No.4 which states that "the occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 209 of the Town and Country Planning Act 1971, or in forestry or a dependent of such a person residing with him or her, or a widow or widower of such a person".
- The reason given for the condition is that "The District Planning Authority would not have been prepared to grant permission but for this special need".

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions in the terms set out below in the Formal Decision.

Procedural Matters

1. At the inquiry, applications for costs were made by the appellants against the Council. These applications are the subject of separate decisions.
2. The applications were the same therefore the same considerations apply to both appeals.

Main Issue

3. I consider that the main issue in both appeals is whether the retention of the disputed condition is necessary to ensure that the dwelling meets the needs of agriculture in the area and to avoid the proliferation of further dwellings in the countryside.

Planning Policy

4. The development plan for the area includes the South Somerset Local Plan 1991-2011 in which Policy STR6 restrains development outside towns, rural centres and villages. Policy HG15 only permits proposals for agricultural or forestry workers' dwellings in the countryside in certain specified circumstances, including where the dwelling is essential to accommodate a full time worker who needs to be readily available on site at most times. The Policy also states that dwellings that are unusually large in relation to the agricultural needs of the unit or are unusually expensive to construct in relation to the income of the unit in the longer term will not be permitted.
5. Policy HG16 provides that the removal of agricultural or forestry occupancy conditions will only be permitted where
 - (1) the restricted occupancy dwelling is not needed to meet the needs of agriculture or forestry business in the area as a whole and not just the particular relevant holding
 - (2) the property concerned has been appropriately marketed for a reasonable time, taking into account resale price, the condition of the dwelling and the likely price which an agricultural / forestry worker could pay for the actual value of the property.

It was common ground that both parts of this Policy must be satisfied before the condition can be released. It was also common ground that, although the Policy and other relevant planning policy refer to the need for forestry as well as agriculture, forestry is not relevant in the context of these appeals.

6. The need to control new building development, including isolated new houses, in the open countryside is one of the key principles of Government planning policy as set out in Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7). The document includes in Annex A detailed guidance as to the circumstances in which new houses in the countryside for agricultural workers can be allowed as an exception to the general policy. The Annex also advises that it will be necessary to have occupancy conditions to ensure that dwellings permitted by virtue of this exception are kept available for meeting agricultural need and that local planning authorities should set out their policy approach to the retention or removal of these conditions.

S.SOM.D.C.

20 APR 2007

7. Department of the Environment Circular 11/95 *The Use of Conditions in Planning Permissions* (Circular 11/95) advises in paragraph 15 of its Annex that a condition should not be retained unless there are sound and clear-cut reasons for doing so; the argument that a condition will do no harm is no justification for imposing or keeping it. Paragraph 105 provides that where an agricultural occupancy condition has been imposed, it will not be appropriate to remove it on a subsequent application until it is shown that the existing need for dwellings for agricultural workers in the locality no longer warrants reserving the house for that purpose.

Reasons

8. In 1987, the Council gave full planning permission for a very substantial new dwelling in a countryside location near to the settlement of South Petherton. The plans for the dwelling showed that it would have 4 reception rooms, 8 bedrooms, 3 bathrooms, a cellar and a 2-storey "folly" to be used as a farm office. The dwelling built pursuant to this permission is now known as Barcroft Hall and is a very imposing house standing in substantial grounds. The present house is more or less as originally built and it was not suggested that any substantial alterations or extensions to the dwelling itself have been carried out.
 9. The justification for granting planning permission for a dwelling in the open countryside was that an agricultural need had been made out for a new dwelling some 2 years previously when outline planning permission was granted for a dwelling on an adjacent site. The need was accepted by ADAS in a report dated 24 May 1985, but this was criticised by the appellants' agricultural witness who considered that the ADAS report contained little by way of substance in its justification for the dwelling. The outline permission was revoked when the 1987 permission was granted.
 10. At the time when the 1987 permission was granted, the Council's officer sounded a note of caution in a report to members; this pointed out that in view of the size and style of the dwelling in relation to the relatively small size of the holding, it was doubtful whether the association between the two would continue in the longer term. The officer specifically warned that this could result in a request to remove the agricultural occupancy condition in the future, which the Council may find difficult to resist. At this time, although it may have been recognised that new agricultural dwellings should be of a reasonable size in relation to the holdings that they were intended to serve, this does not appear to have specifically recorded in any policy guidance and permission for the dwelling was granted in spite of the officer's reservations.
 11. Despite the views put forward at the inquiry by the original developer and farmer who built the house mainly to serve the needs of a fruit farm, the appellants considered that there was never an agricultural need which justified the erection of a dwelling on this site in the countryside. In their view it must follow that the needs of the holding do not justify one today. The farming activities that have been carried out by the appellants since they acquired the property in 2001 (consisting mainly of arable farming, grass and hay crops and sheep grazing) are not of the type that would require anyone to live on the holding. It was not part of the Council's case that the Barcroft Hall dwelling is still needed to serve the adjoining agricultural land and no evidence was put to the inquiry that there is a continuing need for the tie to meet the requirements of the holding itself.
-

12. The Council did, however, suggest that I might take the view that it is possible that a need for a dwelling to serve the holding might be established or re-established in the future; I am not convinced that this approach is correct since, if accepted, the argument could be deployed to defeat any application for removal of an agricultural occupancy condition, irrespective of the circumstances. Also, no evidence was submitted to suggest that it was likely that a need would be re-established on the holding and, in any event, paragraph 105 of Circular 11/95 indicates that it is only necessary to show that there is no *existing* need (my emphasis). I am therefore satisfied that it is not necessary to retain the tie to meet the needs of the agricultural holding at Barcroft Hall, which is the initial test which the first part of Policy HG16 of the Local Plan indicates must be met.
13. Policy HG16 also requires that, in order to obtain the release of an agricultural occupancy condition, it must also be shown that the restricted occupancy dwelling is not needed to meet the needs of agriculture in the area as a whole and not just those of the particular relevant holding. There was no dispute that the underlying purpose of this requirement is to restrict the release of conditions in circumstances where there is an identifiable demand for dwellings that could meet agricultural needs in the area. This would avoid the need for new occupancy-restricted dwellings to be constructed by persons who qualify under Policy HG15 of the Local Plan and Annex A of PPS7, thus avoiding the proliferation of dwellings in the countryside which is a local and national planning imperative.
14. The house is at least 5 times the size of the average new farm dwelling as identified by a 1999 survey¹. The appellants' advisers considered that it has a market value of about £2m even with the agricultural tie in place. Their evidence indicated that the dwelling would be far beyond the means of the average farm worker to buy outright or with a mortgage or to rent. The holding associated with the dwelling at some 30ha is only about a quarter of the size of the average full-time unit.
15. The very large size and value of the dwelling, the mismatch between the house and the holding and the unsuitability of the dwelling in financial terms for any but an extremely wealthy farm worker were not matters in contention at the inquiry. The appellants however did not rely entirely on these matters to establish that the dwelling is not needed to meet the needs of agricultural business in the area. To satisfy the second part of Policy HG16 (the marketing requirement), a telephone survey of farm businesses in the locality was carried out on their behalf by Greenslade Taylor Hunt, Chartered Surveyors specialising in agricultural matters. This was designed to ascertain whether there was a current or anticipated need for additional agricultural workers' dwellings, whether any farmers contemplating retirement in the foreseeable future would be looking to purchase a dwelling in the locality and in the event of positive responses, the price or rental range that would realistically be considered.
16. Of the 104 identified farmers/farm enterprises within a 6km radius of the site, a total of 80 responses were obtained. These showed that there was minimal potential demand for dwellings for agricultural workers or retired farmers in the locality and such demand that existed would only be for properties within the price range £100,000-£300,000 or at a rent of up to £150 per week.

¹ by Reading Agricultural Consultants

17. Both the appellants' reliance on the survey and the survey exercise itself were criticised by the Council and interested parties. As to the first of these, the Council contended that the words "appropriately marketed" in the Policy require the actual offer of the property for sale. In my view, this approach will usually be the correct one. However, in the particular circumstances of this case, there are material considerations that indicate otherwise. The appellants do not want to sell the property and to pretend to offer it for sale would be disingenuous and would cause interested prospective purchasers cost and inconvenience. Also in the appellants' favour is that the survey and its procedure were agreed with officers of the Council prior to the survey being undertaken and the Council's case officer in his report of the Appeal B application to members stated that the survey "is considered to be a robust demonstration of local need".
18. Furthermore, as indicated above, the size and value of the dwelling are on the face of things likely to rule out any realistic possibility of a qualifying occupier being able to afford to buy or rent it. In a number of appeal decisions, most notably that relating to Heddon Oak House, Crowcombe, Taunton (Ref: APP/H3320/A/03/1123215), Inspectors have taken the view that, even where policies require marketing or evidence that the property cannot be sold and no marketing or inadequate marketing has been undertaken, there can still be sufficient evidence to establish that there is very little likelihood that the restricted occupancy dwelling could be sold or let to a qualifying occupier to meet a local agricultural need. Such evidence is in my view present in this case.
19. Regarding the adequacy of the survey undertaken, the Council and interested parties considered that the survey amounted to a snapshot in time which was not a true indicator of need. It was also claimed that the geographical area of the survey was too restricted and that it would not have captured people moving into the area wishing to set up a farming business or retired farmers moving to the area. Interested parties thought that the survey should have been much wider, including advertising in national publications such as "Country Life" and even internationally. Mr Crocker, the former owner of the property, told the inquiry that his wife was interested in acquiring it and running it as a farming enterprise.
20. However, it was not disputed that the survey was undertaken by an experienced surveyor with considerable local contacts and knowledge of farming in the area. It was accepted that there was no definition of "the area as a whole" in Policy HG16; the survey area of 6km radius from the appeal property was not disapproved of by the Council and is similar to that used as an indicator of local need in the Heddon Oak House decision.
21. It would no doubt be possible to elicit expressions of interest from people who could comply with the occupancy condition, possibly retired farmers or "hobby farmers". The possibility of the occupation of a restricted property by such people as an argument for retaining an agricultural occupancy condition was accepted by the Inspector in a decision relating to Oakleaf Farm, Warrendean Road, Hughenden Valley (Ref: APP/K0425/C/02/1088731). However, I agree with the appellants' submission that being able to occupy the dwelling in compliance with the condition is not the same as the acquisition or renting of the property by someone already in the area who needs an agricultural dwelling and who meets the tests in Policy HG15 and PPS7 regarding the provision of a new agricultural dwelling. Only such a person would meet the overall

objective of the planning policies that are relevant to these appeals by moving into Barcroft Hall instead of erecting a new dwelling in the countryside.

22. This was explained by the Inspector in an appeal relating to Villa Vista, South End, Damerham (Ref: APP/B1740/A/04/1144489); in that case, the Inspector found that none of the 6 prospective purchasers relied upon by the local planning authority provided an agricultural need sufficient to justify granting approval for a dwelling in the countryside if they were unable to reside at the restricted-occupancy dwelling. In the case of the appeals under consideration, no evidence of substance was put forward that prospective purchasers or tenants meeting these requirements existed.
23. In summary, therefore, my conclusion in relation to the test in the first part of Policy HG16 of the Local Plan is that it is not necessary to retain the disputed condition since Barcroft Hall is not needed to meet the needs of agricultural business on the associated holding itself or in the area as a whole. With regard to the second part of the Policy, although the property has not been offered for sale, in the particular circumstances of this case, the survey carried out by the appellants has adequately demonstrated that that the test in the first part of the Policy has been met. I am also satisfied that the release of the condition is in accordance with the advice in Circular 11/95 and PPS7 and would not contribute to the proliferation of development in the countryside which Policy STR6 of the Local Plan and PPS7 seek to avoid.

Other Matters

24. Amongst the matters raised by interested parties were suggestions that the appellants had not farmed the holding as a serious enterprise and had converted agricultural land into ornamental landscaped areas. Although the appellants' farming activities had been loss-making, it was claimed that there was scope for a profitable activity such as fruit farming or horticultural enterprise on the land. Whilst these observations may have some substance, they do not change my view that there is at present no need at Barcroft Hall for a dwelling with a restricted occupancy condition to meet the needs of agriculture.
25. Both the Council and interested parties expressed concerns that if these appeals are allowed, it would make it harder for the Council to oppose the release of other agricultural occupancy conditions elsewhere in the Council's area. In my view, the circumstances of this case are very unusual, particularly having regard to the planning history and the size and value of the dwelling involved. I therefore do not consider that my decisions will set a precedent for other cases where Policy HG16 of the Local Plan is involved. In any event, no specific similar cases were drawn to my attention and if any do arise, they will need to be considered on their own merits.

Unilateral Undertaking

26. At the inquiry, the appellants submitted a completed Unilateral Undertaking which in essence would prohibit the disposal of the dwelling and the associated land separately from each other. An existing agreement under section 52 of the Town and Country Planning Act 1971 has a similar effect. The Undertaking would also prevent any applications for further agricultural dwellings on the land. The undertaking is expressed to be conditional on my giving significant weight to it in reaching my decisions.

27. It was a substantial part of the appellants' case that the underlying aim of the relevant planning policy was to prevent the proliferation of new dwellings in the countryside and, insofar as new agricultural dwellings are concerned, the removal of the condition would not contribute to demand for new dwellings of this type. However, if the house is sold separately from the surrounding land, one of the possible outcomes is that the land could eventually be absorbed by neighbouring farms. Likewise, disposal of the land separately or fragmentation of the holding could result in the enlargement of adjoining holdings. If adjoining holdings are enlarged following the acquisition of land currently associated with Barcroft Hall, there would be a greater likelihood of one or more agricultural dwellings being required on those holdings.
28. I note, however, from the officers' report on the Appeal B application that both the appellants' agents and the Council's officers consider the above scenarios to be unlikely. Although it is not possible to predict the future with any certainty, particularly with regard to the future of the agricultural industry, no convincing evidence of the likelihood of the need arising for an agricultural dwelling on the Barcroft Hall land or on any of the adjoining holdings was produced to the inquiry. In any event, as both the appellants' agents and the Council officer's point out, the Council would have the opportunity to scrutinise the need for any agricultural dwelling that is applied for, either on the Barcroft Hall land or on adjoining land. The application would have to meet the strict criteria in Local Plan Policy HG15 and in PPS7.
29. Therefore, the disposal restrictions in the Undertaking do not in my view greatly limit the likelihood of applications for further dwellings. I have not given significant weight to them or to the restriction on applications for further dwellings on the Barcroft Hall land in my deliberations on these appeals.

Conclusions

30. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should succeed. I will therefore grant new planning permissions without the disputed condition.

Formal Decisions

Appeal A: APP/R3325/A/06/2016472

31. I allow the appeal and grant planning permission for the erection of a farmhouse, garden room and garage at Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA in accordance with the application Ref 05/02851/FUL dated 21 October 2005 without compliance with condition number 4 previously imposed on planning permission Ref 51/85/2704 dated 21 April 1987 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Appeal B: APP/R3325/A/06/2028608

32. I allow the appeal and grant planning permission for the erection of a farmhouse, garden room and garage at Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA in accordance with the application Ref 06/01937/S73 dated 7 June 2006 without compliance

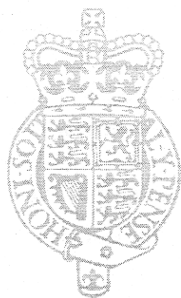
with condition number 4 previously imposed on planning permission Ref 51/85/2704 dated 21 April 1987 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

A J A Ritchie

INSPECTOR

S.SOM.D.C

100 2007



Costs Decisions

Inquiry held on 6 & 7 March 2007

Site visit made on 7 March 2007

by **A J A Ritchie** MA (Oxon) LARTPI Solicitor

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date: 25 April 2007

Costs application in relation to Appeal A: APP/R3325/A/06/2016472 Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Herrick for a full award of costs against South Somerset District Council.
- The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.

Summary of Decision: The application fails and no award of costs is made.

Costs application in relation to Appeal B: APP/R3325/A/06/2028608 Barcroft Hall, North Street, South Petherton, Somerset TA13 5DA

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Herrick for a full award of costs against South Somerset District Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the appellants

1. The appellants sought an award of the full costs of both appeals against the Council. The application was on the basis that the Council had prevented, inhibited or delayed development which could reasonably have been permitted, a matter that paragraph 7 of Annex 3 to Department of the Environment Circular 8/93 *Awards of Costs Incurred in Planning and Other Proceedings* indicates can justify an award of costs against a local planning authority.
 2. The subject matter of the appeals was the removal of an agricultural occupancy condition and the relevant development plan policy (Policy HG16 of the South Somerset Local Plan 1991-2011) requires amongst other things that the property has been "appropriately marketed for a reasonable period of time". The Council had refused planning permission principally because the property had not actually been put onto the market for sale. However, in the circumstances of the case, it was the appellants' case that it would have been fruitless to offer the property for sale in order to determine whether Barcroft Hall was a suitable dwelling to meet the needs of the agricultural community, thus avoiding the
-

proliferation of further dwellings in the countryside. The appellants pointed to the large size of the imposing dwelling and its very high value even with the agricultural tie and the limited size of the holding accompanying it. The survey carried out by the appellants' advisers had reached over 70% of the eligible farming population and had shown that the maximum level of interest was at a value only amounting to a small fraction of the capital value of the appeal property or its likely rental value.

3. It should have been obvious to members of the Council that Barcroft Hall was an anomaly in the planning system and that to market such a high value property as an agricultural dwelling would be pointless. Members had acted unreasonably in refusing the application, particularly as officers had recommended that it be approved and had agreed that the marketing survey was a robust demonstration of local need – this being the key issue for determination. The appellants had incurred the costs of both appeals as a direct result of the members' unreasonable behaviour.

The Response by the local planning authority

4. The Council took an initial point on the interpretation of paragraph 7, asserting that the paragraph had not been infringed, since no development had been prevented, inhibited or delayed. They asserted that the activity for which permission is sought by the appeals is not within the definition of "development" in section 55 of the Act and that, although the Circular as a whole is relevant to the appeals, paragraph 7 is not.
5. Even if the decisions in the 2 appeals went against the local planning authority, this did not necessarily mean that they had acted unreasonably. Members had given a complete and precise reason for refusal of the Appeal B application. They had exercised their discretion in refusing the application and had done so after their legal officer had referred them to the evidence and legal considerations.
6. The terms of Policy HG16 are such that a lack of marketing should lead to the refusal of the application. The shortcomings of the appellants' survey, particularly that a wider exercise was needed to capture evidence as to potential occupiers, were highlighted by Mr Muston in his evidence on behalf of the local planning authority.

Conclusions

7. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
8. Regarding the Council's initial point, both applications, which were made under section 73 of the Act, sought planning permission for development of land, namely the erection of a farmhouse, garden room and garages, without complying with the agricultural occupancy condition. I therefore consider that the subject matter of the appeals is within the scope of paragraph 7 of Circular 8/93.
9. With regard to Appeal A, the failure to determine an application within the prescribed period does not in itself attract an award for costs and no case was made out that the delay in itself amounted to unreasonable behaviour.

10. With regard to Appeal B, it is in my view a tenable argument that the expression "appropriately marketed" in Policy HG16 means that the property must be offered for sale. In my appeal decisions, I have accepted that this will usually be the case. However, when the question of whether the applications complied with the overall requirement of Policy HG16 came to be determined, the considerations weighing in the appellants' favour were in my view very substantial. The planning history of the property indicated that it was at least questionable whether the dwelling should originally have been permitted as an agricultural dwelling. The nature and value of the property were in themselves strong arguments for taking the view that Barcroft Hall has no role to play in meeting the demand for agricultural dwellings in the area. The survey of need had been approved by the Council's officers who had agreed its methodology in advance. The results of the survey established a lack of demand at a value in any way approaching that of Barcroft Hall. And there was an overriding consideration that the appellants did not wish to move from the property and were understandably reluctant to enter into a sham marketing exercise.
11. In the face of these considerations, the Council's decision was in my opinion inappropriate. It was unfortunate that the members did not decide to go back to the appellants in order to discuss and agree how the appellants could comply with Policy HG16 to members' satisfaction. However, there was no obligation on members to take that course of action and there is no evidence that the Council members failed to take into account relevant considerations. They are able to pray in aid that the requirement for appropriate marketing appears in their recently adopted Local Plan (2006) and I do not consider that their reliance on a defensible, albeit in this case misguided, interpretation of the Local Plan should result in an award of costs.
12. In all the circumstances, I consider that the Council's actions fall short of unreasonable behaviour. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated and I therefore conclude that an award of costs is not justified.

Formal Decision – Appeal A

13. I refuse the application for an award of costs.

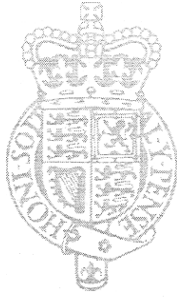
Formal Decision – Appeal B

14. I refuse the application for an award of costs.

A J A Ritchie

INSPECTOR

S.SOM.D.C.



Appeal Decision

Hearing held on 4 April 2007

Site visit made on 4 April 2007

by **M A Hillyer BSc MSc CEng MICE FCIWEM**

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date: 12 April 2007

Appeal Reference: APP/R3325/A/06/2025222

Land at Somerton Field Road, Somerton TA11 6HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice, within the prescribed period, of a decision on an application for outline planning permission.
- The appeal is made by John, Sylvia, Marjory, Alison, Benjamin and Matthew Chant against South Somerset District Council.
- The application Reference 06/00983/OUT is dated 22 March 2006.
- The development proposed is the erection of three dwelling units, workshop (3000 ft²), covered yard (4000 ft²) and hay barn (5000 ft²).

Summary of Decision: The appeal is dismissed and planning permission refused.

Procedural Matters

1. The application is for outline permission in which all matters of detail other than those described in the application are reserved for future determination.

Main Issues

2. From the evidence given at the Hearing, my reading of the written representations and inspection of the site and its surroundings, I consider that there are two main issues in this appeal. The first is the effect of the proposed development on the character and appearance of the surrounding area having particular regard to countryside policy. The second issue is the effect on highway safety and traffic sustainability.

Planning Policy Context

3. The development plan for the area consists of the Somerset and Exmoor National Park Joint Structure Plan Review (2000) (SP) and the South Somerset Local Plan (2006) (LP). Policy STR1 of the SP sets out the objectives of sustainable development, including the need for good design, for minimising journey length and maximising use of public transport, and for prioritisation of use of previously developed land. These principles are echoed in Policy ST6 of the LP, which also requires consideration of the degree to which a proposal respects the form, character and setting of the locality, and the suitability of site access and the local transport network. SP Policy STR6, which is similar to LP Policy ST3, states that development outside settlements should be strictly controlled and limited to that which benefits economic activity, maintains the environment and does not foster growth in the need to travel. Policy EC3 of the LP, the aims of which are echoed in Policy 5 of the SP, says that, subject to other considerations, development will be permitted outside development areas if it does not cause unacceptable harm to the distinctive character and quality of the landscape.

4. National guidance on transport and traffic is available in the form of RPG 10 (RPG) - *Regional Planning Guidance for the South West (2001)* and Planning Policy Guidance (PPG) 13 - *Transport*, on residential development in Planning Policy Statement (PPS) 3 - *Housing*, and on countryside development in PPS 7 - *Sustainable Development in Rural Areas*.

Consideration

The First Issue

5. The site is an open field bounded by hedgerows of varying thickness, presently under grass. It lies in the open countryside. The area is farmland with sporadic farmsteads and agricultural-type buildings and there is a waste collection tip some distance to the north, at a lower level. The surrounding land falls towards the north, east and south, allowing an awareness of the site from the single track lane of Somerton Field Road and glimpses of it in long views from the north, east and southeast. On my site visit I observed that the surrounding environment was relatively quiet with background sounds of a tractor and tip-related activity. I also saw a plot on the site which the Appellants say is destined for a hay and machinery store for agricultural use, authorised under extant notice 06/02772/AGN. As part of my site visit I saw the property of Home Farm in Somerton and noted the uses which the Appellants say would be transferred to the site.

The Visual Effect

6. The development would consist of an enclave of six units of mixed development. The accommodation units would be for residential use: the hay barn and yard would be related to agricultural use, while the workshop and yard would be used for commercial/industrial purposes. All details of the proposal are reserved for future determination, but each use would of necessity have its associated characteristic paraphernalia around it: the domestic units would have related parked cars, gardens and garden equipment while the barn, yard and workshop would have such things as customers' plant, machinery, storage tanks and vehicles, the whole development being served by an accessway, and tracks or hardstandings. Part of the new buildings might appear similar in type to existing units within the surrounding area and part might not, but whatever details might arise from the reserved matters consideration the mass and bulk of the development as a whole would be comparatively large, out of scale, and not in keeping with the nature and setting of the locality. The hedgerows would not render the development unseen from outside the site, and attempts to introduce screening by increasing the height or density of the hedgerows would only serve to change the openness and setting of the area to a degree detrimental to the quality of the landscape.

Countryside Policy

7. The site is not in a highly frequented area but it is not remote from Somerton. It is however outside the existing settlement, in a location where PPS 7 says that development should be strictly controlled for the sake of the intrinsic character, landscape and wildlife of the countryside. The Council in its Appeal statement identified the objective of treating new employment developments outside development areas as inappropriate. Annex A of PPS 7 identifies the possibility of special justification for new enterprises in the countryside and associated dwellings subject to a stringent assessment of functional need and financial viability.
-

8. The envisaged enterprise is in principle that which has been operating from the base at Home Farm for many years, and there is no issue between the parties on the financial viability of the proposal. The agricultural activities of hay collection, storage and sales, and the use and stabling of agricultural machinery are acceptable in this location, as evidenced by Notice 06/02772/AGN. The development would be within an area of farms where plant maintenance would be required but the provision of a commercial service of plant repair would introduce an element of industrial activity into the countryside, which the Appellant says can be noisy and dirty. While this may be a necessary part of a farm's agricultural activity from time to time for equipment working at that farm, it appears to me that the permanent provision of a new workshop facility for customers from a wide area would be at odds with the nature of the area. The Appellants have identified that agricultural engineering is and would be the basis of the business.
9. The Appellants say that a 24 hour on-site residential presence is necessary for the security of equipment. Such a facility is often required at agricultural units for the monitoring of animals but the development would not include an animal husbandry use. There is no evidence that the Appellants have considered a remote monitoring and alarm system or, for example, a shift system of watchmen, and Mr Chant suggested at the Hearing that a security type defence system would not be his wish. If security were to be a significant problem at this site that must raise a question regarding the viability of the proposal. The presence of dwellings on the site would be convenient for security cover and would provide the basis for close and efficient continuity of family life, but from the evidence available I consider that there is no essential functional need for the inclusion of any residential presence in the proposal.

Conclusion

10. The Appellants have provided evidence of instances of agricultural change and development in the locality over the years. Much of this appears to have taken place before the adoption of the constituent parts of the current development plan and before publication of PPS 7, and some of it appears to be related to diversification and re-build at existing sites. Each case must be considered on its merits. I can understand that the mixed use nature of the proposal must be a problem when it comes to identifying suitable sites for this proposal; the Appellants have given reasons for the unsuitability of other sites both within and outside their ownership and have explained their wish to establish domestic, agricultural and commercial/industrial uses on one site, but these are not reasons for relaxing the need to protect the countryside in the public interest. I conclude on this issue that the development would be harmful to the character and appearance of the surrounding area and would conflict with the aims of SP Policies STR6 and 5, of LP Policies ST3, ST6 and EC3, and of PPS 7.

The Second Issue

11. Somerton Field Road and the associated lanes are single track roads without footways but with some designated passing places. I saw on my site visits an element of transient traffic congestion in the locality and a need for pedestrians to take care.
 12. The development would result in additional traffic in the immediate area arising from both the commercial activities and the journeys arising from the residents of and visitors to the three new dwellings. The increase in vehicular and pedestrian traffic movements in the
-

Somerton Field Road area would not be great but because of the restricted nature of the road network the effect would be significant in terms of road congestion and potential safety problems.

13. It is claimed by the Appellants that the development would be linked with the statutory cessation of commercial activities at Home Farm, and this could be confirmed and imposed by condition. It could therefore be that, in the wider transport network, the development would not increase the intensity of commercial traffic movement but would simply change its focus. But the residential use at the Home Farm site would continue. The development would represent an increase in vehicle movements to Somerton and beyond because of trips to and from the three new dwellings. I consider that the occupiers of the development would take to their cars in preference to walking for journeys into Somerton because of the distances involved in reaching services (which are greater than those identified in the RPG), the danger due to lack of footways, and the absence of public transport. The development would therefore not meet the aims of PPG 13 or RPG 10 in this respect and would not be in the interests of traffic sustainability.
14. Drawing together my findings on this issue I consider that the effects on safety and on sustainability would be detrimental to a degree in each case, but cumulatively that detriment would be significant. I conclude on this issue that the proposed development would be harmful to highway safety and traffic sustainability. It would benefit economic activity but it would conflict with other aims of SP Policies STR1 and STR6 and LP Policies ST3 ST6.

Other Matters

15. The Appellants say that refusal of planning permission for the development would be an unproportionate interference of their rights under Article 8 and Article 1 of the first protocol of the convention on Human Rights. They say that the result of a Discontinuance Order (DO) on Home Farm is a violation of their rights to peaceful enjoyment of their possessions and respect for their way of family life, and that the proportionate recompense would be approval of the proposed development.
 16. On the question of Home Farm I must have regard for the outcome of the appeal against the DO. In the Inspector's report dated 10 October 2001 it is stated that the DO is a proportionate action in the public interest, the claim for violation of rights under Article 8 and Article 1 of the First Protocol is not well founded, and compensation is payable. On this basis there can be no "carry-over" of matters to the case that is the subject of the appeal before me.
 17. In the matter of this appeal and Article 1 of the First Protocol, I recognise that dismissal of the appeal would interfere with the Chant family's preferred peaceful ways of enjoyment of their property. However this must be weighed against the wider public interest. For the reasons given above I find the proposal harmful to the need to protect the open countryside and to highway safety and traffic sustainability, and I am satisfied that this legitimate aim can only be adequately safeguarded by the refusal of permission. I consider that the dismissal of the appeal would not have a disproportionate effect on the Appellants.
 18. With regard to Article 8 of the Convention the courts have made it clear that such rights apply to existing homes but do not apply to land on which it is proposed to build a home. I do not consider that the Appellants' claim of violation of Article 8 rights is well founded because the development would relate to such a proposal for a future home.
-

Conclusions

19. Drawing together my findings in this appeal I conclude that the development would be harmful in the context of the two Main Issues and that this harm would not be outweighed by Other Matters. I have considered whether the imposition of those conditions suggested by the Council and reviewed at the Hearing would enable permission to be granted, but find that not to be the case. I have taken into account all other matters raised in the written representations but none is sufficient to override the considerations which have led to my decision.

Formal Decision

20. In exercise of the powers transferred to me I dismiss the appeal and refuse planning permission.

Michael A Hillier

INSPECTOR

20
21
22
23
24

S.SOM.D.C.

16 APR 2017