



Appeal Decision

Site visit made on 6 September 2010

by **Simon Miles BA(Hons) MSc MRTPI**

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

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Decision date:
14 September 2010

Appeal Ref: APP/R3325/A/10/2128985

Gentles Farm, 56 Queen Street, Tintinhull, Nr Yeovill, Somerset BA22 8PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Alan Lavers against the decision of South Somerset District Council.
- The application Ref 09/02781/FUL, dated 10 July 2009, was refused by notice dated 3 December 2009.
- The development proposed is the erection of two stables, one tack room and one hay store (one building) on OS 9213.

Application for Costs

1. An application for costs was made by Mr Alan Lavers against South Somerset District Council. This application is the subject of a separate decision.

Decision

2. I allow the appeal and grant planning permission for the erection of two stables, one tack room and one hay store (one building) on OS 9213 at Gentles Farm, 56 Queen Street, Tintinhull, Nr Yeovill, Somerset BA22 8PQ in accordance with the terms of the application Ref 09/02781/FUL, dated 10 July 2009, and the plans submitted with it, subject to the conditions set out in the attached Schedule, which forms part of this permission.

Main Issue

3. I consider this to be the effect of the proposed development on the living conditions at nearby properties.

Reasons

4. The appeal relates to Gentles Farm in Queen Street, a mainly residential road in Tintinhull. The site includes land to the rear of the main dwelling, upon which the proposed building, comprising stables, tack room and hay store, would be erected. I saw on my visit that the proposed building would be sited a considerable distance behind the main street frontage, beyond the rear gardens of the existing residential properties, which back onto open agricultural land. I note that the nearby gardens are of reasonable size, in most cases in excess of 20m in length, such that there is a fair degree of physical separation between the existing dwellings and the site.
5. As a consequence of this, I consider that it is only the rear part of the nearest gardens that would be capable of being affected to any significant degree by odours, noise and other disturbance associated with the use of the proposed

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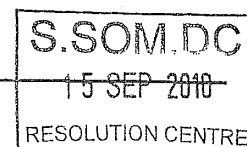
building. In assessing the significance of any such effects, I have had regard to the rural character of the area, including the fact that the gardens back onto agricultural land, which may include livestock and associated buildings and activities, either now or in the future, all of which are capable of generating odours and noise and attracting flies and other pests.

6. In the same way, I must have regard to past and future agricultural uses to which the site itself could be put without the need for planning permission. I note, furthermore, that the appellant does not object to the imposition of conditions, as suggested by the Council, to control the use of the development, the storage and burning of materials/waste and the installation of lighting.
7. When considered in this context, having regard to the moderate size of the proposed development and the extent to which any potentially adverse effects would be mitigated by the suggested conditions, I am not persuaded that the development would be associated with a level of activity and a degree of disturbance, in the form of odours and the potential to attract flies, pests, vermin, etc, that would be sufficient for serious harm to be caused to the occupiers and users of the nearby gardens.
8. In reaching this view, I have also taken account of the fact that the Council is considering a planning application to convert a barn located adjacent to the site, to the rear of No 58 Queen Street, for use as an annexe. However, I do not consider that the effect of the development on this building, whether or not it is converted to an annexe, would be significantly worse than the effect on the existing gardens, which I find acceptable. Neither do I consider the proposed building to be of a size, height or bulk that would render any future residential use of the barn unacceptable by reason of visual dominance or loss of light.
9. This leads me to conclude, on the main issue, that the proposed development would not cause significant harm to the living conditions at nearby properties, whether in relation to odours, noise and disturbance or visual intrusion. I therefore find no conflict with saved Policies ST6 and EP7 of the adopted South Somerset Local Plan, insofar as these policies seek to prevent unacceptable harm, including where odour would result in an unacceptable nuisance, to the residential amenity of the occupiers of other properties.
10. In other respects, I do not consider that the moderate amount of traffic associated with the development would have any significant adverse effect on local roads in terms of amenity and highway safety. I am not persuaded that the proposed building would be sited in such close proximity to existing buildings as to constitute a serious fire risk. Access to the site for emergency vehicles, whilst somewhat restricted, is no different to many other rural sites and I would not be justified in withholding permission on this basis. Matters relating to drainage can be adequately controlled by means of a condition.
11. I note that the proposed development would affect a public footpath which crosses the site. However, the local Rights of Way Officer comments that recently planted foliage would tend to obscure public views of the development. He does not oppose the scheme on the grounds that any minor diversion of the footpath, which would be subject to a separate requirement for a diversion order to be confirmed, would accord with an alternative use that appears to have become established for some years. I take the same view.

12. In conclusion, for the reasons given, I find that the appeal should succeed. In addition to the standard time limit, I will impose a condition detailing the relevant plans for the avoidance of doubt and in the interests of proper planning. I will impose the conditions described above, which I consider to be necessary and reasonable in the interests of residential amenity. I will also impose a condition relating to foul and surface water drainage to control runoff into watercourses, ditches, etc, and prevent flooding. However, a condition relating to materials is not necessary as these are specified in detail in the application, and the development must be carried out in accordance with these details in any event.
13. Where appropriate, I have amended the Council's suggested conditions in light of the national advice and model conditions given in Circular 11/95 *The Use of Conditions in Planning Permissions*. I allow the appeal and grant planning permission accordingly.

Simon Miles

INSPECTOR



Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans, unnumbered, entitled: Location Plan, Block Plan, Layout Plan and Plan of Stable Block.
- 3) The building hereby permitted shall only be used for the keeping of horses for private recreational purposes ancillary to the residential use of the property known as Gentles Farm or for agricultural purposes.
- 4) No means of external illumination shall be installed on any part of the site without details having first been submitted to and approved in writing by the local planning authority. Any such means of external illumination shall be installed in accordance with the approved details and retained as such thereafter unless the local planning authority gives its prior written consent to any variation.
- 5) No raw materials, products, scrap or waste materials shall be stored in the open on any part of the site.
- 6) There shall be no burning of any produce or materials on the site other than in an incinerator within a building.
- 7) Prior to the commencement of development details of a scheme for foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The scheme shall be completed and brought into operation before the development hereby permitted is brought into first use and the scheme shall be retained as such thereafter.



Costs Decision

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Costs application in relation to Appeal Ref: APP/R3325/A/10/2128985 Gentles Farm, 56 Queen Street, Tintinhull, Nr Yeovill, Somerset BA22 8PQ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Alan Lavers for a full award of costs against South Somerset District Council.
- The appeal was made against the refusal of planning permission for the erection of two stables, one tack room and one hay store (one building) on OS 9213.

Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The appellant complains that the Council failed to produce evidence to support its decision, which was contrary to the advice of its professional officers that planning permission should be granted subject to conditions. A full award of costs is sought on the grounds that there should have been no need for the appeal.
3. Paragraph B16 of the circular states that authorities will be expected to produce evidence to show why development cannot be permitted and to provide reasons for refusal which are complete, precise, specific and relevant to the application. The Council has set out in its statement the reasons why it was concerned about potentially adverse effects of odour on the living conditions at nearby properties, with reference to the use of the proposed development and the position of existing and proposed buildings. I consider the manner in which the Council's reason for refusal is framed to be acceptable in terms of the above requirements.
4. Paragraphs B20, B23 and B24 of the circular states that authorities must consider the advice of consultees, but are not bound to accept the recommendations of their officers, provided that they can show reasonable planning grounds for their decision. Although I have found in favour of the appellant on the merits of this case, I am satisfied that the Council was reasonably entitled to exercise a degree of subject judgement in assessing the severity of environmental effects, such as odour, which are difficult to quantify objectively.

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5. Having considered all the evidence before me, I can find nothing to indicate that the Council failed to consider the possibility of imposing relevant conditions that might have allowed the development to proceed, as required by paragraphs B25 and B29 of the Circular. I take this view, because the recommendations of officers and their suggested conditions are clearly set out in the committee report, and there is nothing to indicate that the Council did not weigh these matters before coming to its decision.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Circular 03/2009, has not been demonstrated. An award of costs is therefore not justified and the application fails.

Simon Miles

INSPECTOR

