The Planning Inspectorate

Appeal Decision

Site visit made on 2 November 2010

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 5 January 2011

Appeal Ref: APP/R3325/A/10/2135041
Land to the rear of The Phoenix Hotel, Fore Street, Chard, Somerset TA20 1PH

- 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 Ashdown Investors Ltd against the decision of South Somerset District Council.
- The application Ref 10/00093/OUT, dated 4 January 2010, was refused by notice dated 8 July 2010.
- The development proposed is residential development works.

Application for costs

1. An application for costs was made by Ashdown Investors Ltd against South Somerset District Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Preliminary matters

3. The application that led to this appeal was made in outline with access to be considered at this stage and all other matters reserved for later consideration.

4. A section 106 unilateral undertaking to provide affordable housing and to make contributions towards transport and leisure facilities has been submitted by the appellant.

Main Issues

5. The main issues are firstly the effect of the proposed development on the character and appearance of the Chard townscape and secondly, the effect on highway and pedestrian safety.

Reasons

Character and appearance

6. The Phoenix Hotel occupies one of a number of long narrow plots fronting Fore Street. Extensions, outhouses and more recent building have typically extended development deep into these plots. This is an historic pattern typical of the Conservation Area in which they lie. At the Phoenix Hotel this includes new dwellings laid out along almost the full length of the plot. The courtyard

however also provides access to a detached house and to the appeal site both of which lie to the north, beyond the Conservation Area boundary.

7. The entrance from Fore Street is narrow and the proportions of the courtyard and the buildings lining it to either side are modest. The form and scale is of a traditional mews. Both the illustrative drawings and the size of the appeal plot suggest that the proposed development in contrast would be of a more substantial nature. In my view this would be an unexpected and jarring addition to the traditional courtyard that would in effect extend it awkwardly and very substantially beyond the hotel and the narrow entrance from Fore Street.

8. That the scale of development would be a matter for consideration at the reserved matters stage and that density could be controlled by conditions does not allay my concern that the extension of residential development in this manner, substantially beyond the courtyard, could be successfully achieved without harm to the established character and appearance of this part of the town.

9. The development would be sufficiently far from the Phoenix Hotel itself to ensure that its setting is preserved. The courtyard however forms part of the Conservation Area and contributes to its historic character and appearance. In eroding the character and appearance of the courtyard the proposal would thus fail also to preserve the character and appearance of the Conservation Area.

10. On the basis of the information before me and on my own observations at the site visit I conclude therefore that the proposed development would fail to preserve or complement the character and appearance of the Chard townscape contrary to Policy ST6 of the South Somerset Local Plan (LP) 2006.

Highway and pedestrian safety

11. The appellant has indicated that the development could be laid out in such a way as to prevent on-site car parking. The site is close to town centre facilities, services and bus routes and many residents may choose not to own a private car. There are public car parks close by as well as some on-street parking, and I have seen nothing to suggest that prevention of parking in places where it would cause a hazard to traffic could not be enforced. I thus have no reason to conclude that an absence of on-site parking would give rise to significantly increased hazards on surrounding roads.

12. That said I turn now to consideration of the impact on the Phoenix courtyard. The appellant has suggested that fire engines could get close to the site through Essex Close. I understand no agreement has however been reached with the Council to provide access to the site from the east. All access to the site would be through the courtyard. In this respect the proposed development would contrast markedly with the development for 12no. dwellings granted planning permission on the adjoining site to the south which will have an entrance through its eastern boundary wall. Whilst vehicle access to the appeal site itself my be restricted, given the distance from Fore Street it is very likely that delivery and service vehicles, taxis, visitors and residents who do own vehicles will wish to bring them into the courtyard at times, particularly if they have goods, shopping etc to deliver.

13. Visibility at the entrance to the courtyard is poor and the entrance itself is narrow. And even where the courtyard opens out to the rear of the hotel,

manoeuvring space is limited. The Council granted planning permission for a total of 5no. dwellings at the rear of the hotel in 2008 and 2010 adding to traffic generation within the courtyard. The proposed development would place a further burden on the access. Notwithstanding the comments made by the Highway Authority, I consider the cumulative impact of traffic generated by the consented development together with that now proposed would give rise to an increased danger to pedestrians within the courtyard and to road users at the entrance.

14. Therefore whilst I find no harm arising from the lack of on-site parking, I conclude that the proposed development would have a detrimental effect on the safety of pedestrians within the Phoenix courtyard and on the safety of road users in Fore Street contrary to Policy 49 of the Somerset and Exmoor National Park Joint Structure Plan Review 2000.

Unilateral undertaking

15. The Council has requested the provision of affordable housing, contributions towards sport and leisure facilities and contributions towards improvements to the traffic signalling system at the junction of the A30/A358 in the centre of Chard. In respect of the first two of these, reference is made to Local Plan Policies. I have seen no copies of these. Nor I have seen any evidence to indicate a local need for affordable housing or the nature, adequacy or accessibility of local sport and leisure facilities. On the basis of the information before me I cannot therefore conclude that the sums sought in respect of these items are necessary to make the development acceptable in planning terms, directly related to the development or fairly and reasonably related in scale and kind.

16. With regard to the requested contribution towards the traffic signalling system, a little more detail has been provided. However, as set out by the Council contributions are calculated on the basis of dwelling numbers rather than vehicle movements generated. It seems to me that occupiers of a dwelling within a car free development would be likely to make fewer car journeys than those occupying housing with on-site parking and I am not convinced therefore that the contribution would be fairly and reasonably related in scale to the development proposed.

17. I conclude therefore that the contributions sought do not meet the tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010. For this reason and having regard also to the concerns raised as to the validity of the submitted undertaking and in particular the lack of a seal, I have not taken the undertaking into account in coming to my decision.

Conclusion

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Olivia Spencer

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 2 November 2010

by Olivia Spencer BA BSc DipArch RIBA

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

Decision date: 5 January 2011

Costs application in relation to Appeal Ref: APP/R3325/A/10/2135041 Land to the rear of The Phoenix Hotel, Fore Street, Chard, Somerset TA20 1PH

- 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 Ashdown Investors Ltd for a full award of costs against South Somerset District Council.
- The appeal was against the refusal of planning permission for residential development works.

Decision

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

Reasons

2. The application that led to the appeal was in outline with scale a reserved matter. Density too could potentially be controlled by imposition of a condition. Whether the development would respect the character and appearance of the area in accordance with development plan policy is nevertheless a valid issue. Planning authorities are not bound to accept the recommendations of their officers but should produce relevant evidence to support their decision. The evidence provided on this matter was limited but sufficient, together with observations at the site visit, for me to reach a conclusion on the matter. Further very little of the appellant's appeal statement was taken up with addressing this and I do not consider that on its own it would thus have given rise to any significant expense. The evidence in support of the reasons for refusal related to parking and highways matters was more robust.
3. I have set out in the appeal decision the reasons why other planning permissions granted by the Council do not provide a justification for the proposed scheme and why notwithstanding the opportunity to impose conditions the appeal should be dismissed.
4. Matters raised in respect of both the main issues were very largely a matter of judgement. That the authority in these circumstances reached a different view to that of its officers is not unreasonable and I consider evidence has been provided to support those judgements.
5. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense as described in circular 03/2009 has not been demonstrated and that an award of costs is not therefore justified.

Olivia Spencer

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 11 January 2011

by Roger Pritchard MA PhD MRTPI

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

Decision date: 20 January 2011

Appeal Ref: APP/R3325/A/10/2138863
Bay Tree Farm, Claycastle, Haselbury Plucknett, Crewkerne, Somerset, TA18 7PE

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Eden4flowers.co.uk Ltd. against the decision of South Somerset District Council.
- The application Ref 10/03089/S73, dated 26 July 2010, was refused by notice dated 22 September 2010.
- The application sought planning permission for the change of use of a wooden barn for use as packing/dispatching of flowers for web based business without complying with a condition attached to planning permission Ref 08/03912/S73, dated 4 December 2008.
- The condition in dispute is No 2 which states that: *'The subject land, including any buildings thereon, shall be used for an internet flower delivery business and for no other purpose (including any other purpose in Class B1 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) and no other associated goods other than flowers, floral displays, stuffed toy figures, chocolates, balloons, food or jewellery shall be dispatched from the premises.'*
- The reason given for the condition is: *'To ensure that the business is restricted to the terms and goods defined in the application and that the business does not evolve into a business which would have the potential to cause nuisance by reason of noise, general disturbance and traffic generation to residential residents in the area in accordance with Policy ST5 of the South Somerset Local Plan.'*

Decision

1. I dismiss the appeal.

Main Issue

2. I consider the main issue to be whether the variation of the disputed condition would result in material harm to the living conditions of the occupants of neighbouring residences.

Reasons

3. The appeal site comprises a barn, granted permission in 2003 for a change of use for the packing and distribution of flowers sold through the web (Ref 03/01862/ COU). There have a number of applications to vary the conditions originally placed on that permission. The latest of these, to which the application before me refers (Ref 08/03912/S73), varies condition No. 05 of a

previous permission (Ref 07/02210/COU) – which permits more than one collection from the premises on three days per year – but carries forward all those previous conditions that apply to the use so far as they continue to be applicable.

4. The appeal site is in an isolated location on the western edge of the village of Haselbury Plucknett. Access is via a narrow lane that proceeds west through the village before reaching the A3066. There is no footway and the junction with the A3066 has poor visibility. Nevertheless, it provides the only link into the national highway network via the A30. (Access from the site to the east is via very narrow lanes which commercial traffic would find virtually impossible to use.)

5. I have no doubt that the business on the appeal site had enjoyed significant commercial success since first being established. This is demonstrated by the number of applications made by the appellants to relax conditions imposed on the original permission and their submission referring to major national companies in this field with whom they appear to be seeking to compete. This supplemented by evidence from local residents which points to a growing intensification and diversification of the on-line business. I was particularly referred to the web sites, eden4gifts and the planned eden4wine, which raise questions as to whether the appellants' future business model will be limited to the dispatch of flowers with which other goods are included or to widen the on-line operations to the sale of a wider range of stand-alone goods.

6. I acknowledge that this is a relatively small site, occupied by a small building. However, the success of the business occupying it seems to me to depend very much on increasing the throughput of goods. Such increases pose issues in relation to the suitability of this location, both in terms of greater traffic volumes that would lead to both a greater risk to the safety of highway users in the vicinity and a deterioration in environmental conditions for neighbours and the wider village.

7. The appellants suggest that the proposed variation before me represents only a small change. I accept that the other conditions attached to permission (Ref 08/03912/S73) would continue to apply to the use of the site. Those conditions restrict the nature of the use and should provide a range of safeguards that limit traffic generation, as well as other potential environmental impacts on neighbours, such as noise.

8. Nevertheless, I am conscious that the sensitivity of the site and the difficulty of the access to it is such that even small increases in activity may result in significantly magnified problems. Although I note that the Highway Authority has not formally objected to the variation of condition 02, it has consistently expressed concerns about the standard of the approach roads and their suitability for HGVs. I share this concern as well as accepting that there would be more general environmental harm from increased activity on, and to and from, the site.

9. In coming to this view, I have reflected on the comments made by my colleague in 2005 (Appeal Ref APP/R3325/A/04/1169249) both in relation to the general impact of the business and the case for extending the range of associated goods to include wine and champagne. If anything, the expansion of the business has added weight to the concerns he expressed at the time about the vulnerability of the surrounding area and the risks associated with widening the raft of products sold from the site. I note that he was concerned

with a proposal that would have had a throughput of 4-5 cases of wine, whilst the appellants are now suggesting a storage capacity of 18 cases. I see nothing to cause me to disagree with his conclusions in respect of adding alcoholic beverages to the list of goods that can be sold from the site. On the contrary, subsequent developments seem to me to reinforce them.

10. I have also considered the appellant's suggestion that objections could be overcome by a condition that limited the storage of alcoholic beverages to a caged area restricted in size. Apart from my feeling that the size of such an area may be less significant than the throughput of goods (reflecting the point I have made in paragraph 6), I consider such a condition would, in practice, be almost impossible to monitor or enforce. Nor would it have any impact on the throughput of stock which, as I have suggested above, is likely to be the far more significant issue. It would therefore fail the tests put forward in Circular 11/95, *Use of Conditions in Planning Permissions*.

11. I therefore conclude that to vary condition 02 of permission Ref 08/03912/S73 as proposed by the application would be contrary to Policy ST6 of the adopted South Somerset Local Plan as it would result in unacceptable harm to the residential amenity of adjacent properties.

Conclusion

12. For the reasons given above I conclude the appeal should be dismissed.

Roger Pritchard

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 11 January 2011

by Roger Pritchard MA PhD MRTPI

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

Decision date: 1 February 2011

Appeal Ref: APP/R3325/X/10/2138801
Court Farm House, Clapton, Crewkerne, TA18 8PU

- 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 Mr John Williams against the decision of South Somerset District Council.
- The application Ref 10/01444/COL, validated on 26 April 2010, was refused by notice dated 30 July 2010.
- The application was made under section 192(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 the use of land for the siting of a mobile home for use ancillary to main dwelling.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The copy of the application available to me was not dated. However, I have used the date on which the Council validated the application, which is also the date quoted in the appeal application.

3. Some initial confusion seems to have arisen between the applicant and the Council over where the mobile home was to be positioned. A revised plan, dated 17 November 2010, indicated both the actual location of the mobile home and the location which the appellant suggests the Council originally considered was proposed. My site visit confirmed that the location of the mobile home, which is in position, is as indicated on the drawing to which I refer above and as also indicated on the coloured map attached to the appeal. Moreover, the Council confirmed to me that this was the basis on which it had taken its decision to refuse a certificate.

4. In refusing to grant a certificate, the Council cited two reasons. The first was that the mobile home was not within the residential curtilage of Court Farm House. The second was that the mobile home would not constitute permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended ('the GPDO') as it was not for a purpose incidental to the enjoyment of the dwellinghouse.

5. However, whilst mobile homes may be 'structures' as defined in the Caravan Sites and Control of Development Act 1960 (and subsequent amending legislation), they do not necessarily constitute 'buildings' as defined in the Town and Country Planning Act 1990. The appellant emphasises that the mobile home at Court Farm House falls within the definition of a 'caravan' as set by the 1960 Act and its successors. Although it has had any wheels removed, the mobile home is, in my view, transportable and of a form and size that one regularly sees being moved on the public highway.

6. I conclude that, as a matter of fact and degree, the mobile home at Court Farm House is not a building within the definition set by the 1990 Act. It does not therefore constitute operational development and Class E of the GPDO cannot apply. The issue is whether the stationing of the mobile home represents a change to residential use that requires planning permission or whether it falls within the exception to the definition of development set out in Section 55(2)(d) of the 1990 Act. The tests for this exception are similar to those for permitted development under Class E, i.e. that its use is within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

Main Issue

7. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

The curtilage of Court Farm House

8. In respect of the first part of the exception set out in section 55(2)(d), the Oxford English Dictionary defines *'curtilage'* as *'A small court, yard, garth or piece of ground attached to a dwellinghouse and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings.'*

9. The characteristics of a curtilage were reviewed in *McAlpine v SSE* [1995] JPL 843, which has been referred to by the Council. They are that it is confined to a small area about a building, that there needs to be 'intimate association' with other land undoubtedly within the curtilage, and that physical enclosure is not necessary. Nevertheless, assessment of curtilage in any particular case is largely a matter of fact and degree.

10. The land on which the mobile home is stationed is to the north east of the farmhouse. It forms a raised area, surfaced by hardcore and 3 to 4 metres above the farmhouse's floor height. Apart from the mobile home, the land is occupied by a large shipping container – said by the appellant to be used as a workshop, a lawnmower store, and a fruit cage. The mobile home is positioned towards the north eastern edge of the raised area and is around 30 metres from the nearest elevation of the farmhouse. Conifer hedges up to 4 metres in height both screen the mobile home from the farmhouse and, on the other side, from the open ground that rises to the north. Vehicular access is provided by a separate spur that takes off from the main access road to the house and runs along the north west boundary of the property.

11. The appellant states that the land has been part of the domestic garden of Court Farm House for over 25 years. However, it does not have the appearance of a garden. The overall impression is of a yard area,

predominantly hard surfaced, that is physically and functionally separate from the farmhouse and the area immediately adjacent to it. The mobile home is not obviously visible from the farmhouse and the land on which it is stationed has an independent vehicular access (which must have been used to bring the mobile home on to the site).

12. As a matter of fact and degree, I consider that the land on which the mobile home is stationed does not meet the characteristics of curtilage as defined in the *McAlpine* case when related to Court Farm House. In particular, it is not intimately associated with the area immediately around the farmhouse that does bear all the characteristics of a domestic garden. It is physically separated from Court Farm House and is different in appearance and character. It does not therefore fall within the curtilage of Court Farm House.

Purposes incidental to the enjoyment of the dwellinghouse

13. My conclusion in paragraph 12 would bring the stationing of the mobile home within the definition of development as set out in section 55(1) of the 1990 Act, irrespective of the purposes to which it will be put.

14. Nevertheless, the appellant asserts that the mobile home is incidental to the purposes of Court Farm House. He has given assurances in respect of how the mobile home would be used and commented that it will lack certain amenities normally expected of a separate residential unit, such as an oven. Nor will it be separately metered.

15. However, although the mobile home was not fully fitted out at the time of my site visit, its scale and form is such that I consider it capable of functioning as a separate residential unit. Whatever the appellant's current intentions, it could easily be so converted in the future. It seems to me to be entirely different in purpose from the buildings and structures that might normally fall under Class E of the GPDO or the more general exception to the definition of development provided by section 55(2)(d) of the 1990 Act that should be applied here.

16. I therefore conclude that the stationing of the mobile home does not represent a purpose incidental to the enjoyment of Court Farm House as such.

Conclusion

17. For the reasons given above I conclude, on the evidence available to me, that the Council's refusal to grant a lawful development certificate in respect of the stationing of a mobile home at Court Farm House was well-founded and that the appeal should not succeed. In coming to this conclusion, and for the avoidance of doubt, I should explain that the planning merits of any future development are not an issue for me to have considered and my decision rests on the facts of the case and relevant planning law.

Roger Pritchard

INSPECTOR