



Appeal Decision

Site visit made on 31 August 2011

by **Pete Drew BSc (Hons), Dip TP (Dist) MRTPI**

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

Decision date: 7 September 2011

Appeal Ref: APP/R3325/A/11/2155078

**Orchard View, Pulmans Lane, Hermitage Street, Crewkerne, Somerset
TA18 8HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 [hereinafter "the Act"] against a refusal to grant planning permission.
 - The appeal is made by Mr David John Webster against the decision of South Somerset District Council.
 - The application (Ref. 11/00431/FUL), dated 29 January 2011, was refused by notice dated 28 April 2011.
 - The development proposed is to demolish garage and develop a site providing a two bedroom detached cottage with a garden and parking.
-

Decision

1. I dismiss the appeal.

Preliminary matter

2. At appeal stage it has been suggested that the 2 car parking spaces within the red line area "*...could be used solely for Orchard View*", the effect of which would be to render the proposed dwelling to be car free. However this is not the basis upon which the Council assessed the proposal or consulted interested parties, including the Highway Authority. Amongst other things, it might be said to have implications for the living conditions of prospective occupiers as windows serving the main bedroom would be adjacent to those parking spaces. Moreover I am not persuaded that an enforceable planning condition could be imposed that stopped prospective occupiers from utilising the parking spaces. For these reasons I decline to deal with the appeal on this basis. It is open to the Appellant to make a further application if car free housing were proposed.

Main issues

3. I consider that there are 2 main issues in this appeal. The first is the effect of the proposed development on the character and appearance of the area, including views into and out of the adjacent Crewkerne Conservation Area [CA]. The second is the effect of the proposed scheme on highway safety.

Reasons

(i) Character and appearance

4. The appeal site lies to the south of Pulmans Lane, the northern boundary of which is designated to be part of the CA. The CA is generically characterised by dense, predominantly terraced, buildings that typically front straight on to the highway. This is evident from the main roads, e.g. Hermitage Street, from which vehicular access is obtained, which radiate out from the centre, and from that part of Pulmans Lane that lies within the CA, including The Print House.
5. I consider there is an abrupt change after The Print House from the enclosed feel evident within the CA to the more open and spacious vicinity of the appeal

site where the existing dwellings, Orchard Lodge, Orchard View and Wood End, are set back from the private highway. In this context the proposed dwelling would stand sentinel over the lane, which would be at odds with its immediate neighbours. If this were part of a more comprehensive redevelopment, including Orchard Lodge, it might link back to the form of development in the CA and give rise to an appropriate transition from the suburban environment to the south. However on its own it would comprise an isolated and conspicuous feature that would be inappropriate to the immediate context of its environs.

6. I am particularly concerned that, in sharp contrast to the prevailing character of the majority of buildings within the CA, the proposed dwelling would not face on to, and therefore address, Pulmans Lane. The northern elevation shown on plan form would comprise a blank 2-storey wall with no openings below eaves level. One redeeming feature of this elevation would be that it would maintain the enclosed feel of the CA but this positive would then be undermined by the proposal to remove a section of the stone wall to facilitate 2 parking spaces. As there is a vehicular access serving an existing turning head the proposal to remove a section of stone boundary wall seems to me to be unjustified and I am concerned that it would detract from this characteristic feature of the lane. I examine the rationale to remove it further in the second main issue below.
7. In these circumstances I find a conflict with Policy EH1 of the South Somerset Local Plan [LP], adopted April 2006, because it would harm views into and out of the CA and, by virtue of not facing the highway, fail to comply with criteria 1 and 4. I consider that, for the same reasons, the proposed scheme would not comply with criterion 4 of LP Policy ST5 and criteria 1, 2, 3, 4 and 5 of LP Policy ST6. The alleged conflict with Policies 8 and 9 of the Somerset & Exmoor National Park Joint Structure Plan Review 1991-2011 [SP], adopted April 2000, is not so obvious and in my view not made out in the material before me. I am not convinced this scheme would harm the special character of the settlement or the setting of buildings of historic interest. The identified harm is to views into and out of the CA rather than to the CA itself, but this positive finding does not greatly assist the Appellant in view of the identified conflict with LP Policies.
8. I appreciate that the existing garage building is not particularly attractive but it is fairly innocuous, being partly screened by the existing trees. Although it has been suggested that the new dwelling would add variety and interest I consider it is necessary to do this whilst respecting the character and appearance of the area, and for the identified reasons, I am not persuaded this scheme does so. Whilst I understand that planning permission has been granted for residential development on the former depot site I have no details of the particular form and layout that has been agreed and so this factor does not justify the scheme.
9. I entirely reject the claim that the appeal site is not visible from within the CA, including Pulmans Lane, but in any event it is abundantly clear the dwelling would be highly visible in views into and out of the CA. I have no reason to doubt that the materials would be sympathetic but neither this factor nor the removal of the conifers would outweigh the policy conflict that I have identified.
10. On the first issue I conclude that the proposed development would harm the character and appearance of the area, including views into and out of the CA. In the circumstances I find a conflict with LP Policies ST5, ST6 and EH1, and there are no material considerations that outweigh the identified policy conflict.

(ii) Highway safety

11. The Appellant says that there are 6 dwellings served off Pulmans Lane but not all of them appear to have the capacity to provide vehicular parking off of the

highway, e.g. The Retreat does not appear to have off-road parking from the Pulmans Lane frontage and might be serviced from Legion Mews at the rear. In this context, having regard to the 2 parking spaces proposed to serve the new dwelling, I accept the Highway Authority's claim that the additional house would result in a significant increase in the use of the junction and the lane. For this reason I consider the proposed dwelling would materially increase the propensity for vehicles from opposing directions to meet on Pulmans Lane.

12. In my view it would be difficult for 2 vehicles to pass along Pulmans Lane and the most likely outcome is that one vehicle would have to manoeuvre in order to let the other past. It might be that the frontage of Orchard Lodge might serve as a passing bay or that a vehicle might reverse back to the entrance serving Orchard View, but given that Pulmans Lane is a footpath even this type of manoeuvre has the potential to give rise to a conflict with pedestrians. In a worse case scenario it is conceivable that vehicles that met near the Hermitage Street entrance to the lane, where there is a significant length of single track road, might give rise to a vehicle reversing back out onto Hermitage Street. I have no doubt this would seriously detract from highway safety for all users of the highway, but particularly for pedestrians on the footway which, my own observations confirmed, is one of the main pedestrian links to the town centre.
13. The Highway Authority is concerned about visibility at the junction of Pulmans Lane with Hermitage Street but my inspection would suggest that it is the presence of parked cars rather than the buildings that compromises visibility for emerging vehicles. My view on this point is supported by the observations of local residents. It might be that more extensive markings than those which exist could address this problem but the existing markings do mean that drivers are likely to emerge extremely cautiously, which might be no bad thing.
14. Visibility along the street edge, between the vehicular exit and the footway, is poor, particularly to the south of Pulmans Lane. However my attention has been drawn to the Legion Mews development, where the Council has permitted dwellings to be served from a similar access. Paragraph 7.8.3 of Manual for Streets says that the absence of splays will encourage drivers to emerge more cautiously and consideration should be given to whether it is appropriate taking 3 factors into account. Noting that the footway is narrow but that the frequency of movements is likely to be low, the amount of pedestrian activity is the key factor. However given what the Council has permitted at Legion Mews I am not persuaded this relationship would unacceptably detract from highway safety.
15. The Appellant argues that removal of the wall on the Pulmans Lane frontage of the site would result in "*very significant improvements to highway safety*" that "*should not be underestimated*". However in practical terms the access serving Orchard View and Wood End is the end of the road with only pedestrians likely to use the lane past this point. Although I accept the wall's removal from the site frontage would improve visibility at the existing vehicular access I question the extent to which this would benefit highway safety. Vehicular speeds are likely to be very low and the existing access appears to be splayed to facilitate inter-visibility between emerging vehicles and pedestrians. For these reasons I consider this factor has been seriously over stated and it does not overcome my concerns regarding highway safety [or, for the reasons that I have explained in my consideration of the first main issue, the loss of the wall].
16. On the second main issue, despite my positive finding regarding visibility at the junction, I conclude that the proposal would be unacceptable on the basis that the significant increase in movements would detract from highway safety. As

such I find a conflict with SP Policy 49, because I consider there would not be a safe access to the public highway, and criterion 5 of LP Policy ST5.

Other matters

17. I appreciate that this is a highly sustainable site for new housing being only a very short walk to the shops, services, employment opportunities and public transport nodes including the railway station. This leads me to find compliance with LP Policy ST5, notably criteria 1 and 2. In saying this I acknowledge that the appeal site would not fall within the definition of previously-developed land in Planning Policy Statement (PPS) 3 'Housing' but it would make efficient use of what, in housing policy terms, is an appropriate site within the urban area. Thus whilst the Council say it would be a very small plot, out of character with its surroundings, given the policy context and the small size of plots serving dwellings in the area, e.g. those on Hermitage Street, I am unable to agree.
18. Although the draft National Planning Policy Framework document, issued for consultation on 25 July 2011, contains a presumption in favour of sustainable development, as this document is in draft form and subject to change, I have accorded its policies little weight. In these circumstances I am not persuaded compliance with aspects of LP Policy ST5 outweighs the harm and conflict with LP Policies that I have identified in my consideration of the main issues.
19. I have noted the letters of support from interested parties and I acknowledge that the proposed dwelling could be described to be a quality, affordable and well designed house, albeit not affordable as defined in PPS 3. Contrary to one claim the scheme was not refused by reason of "overcrowding" and indeed I have found support for the principle of housing development in this location. Finally, although there is an objection to the removal of what is described as a party wall, between Orchard View and Wood End, this would appear to be a civil matter between the respective parties and not a reason to dismiss this appeal. However these material considerations do not clearly outweigh the conflict with LP policies that I have identified in the main issues.

Conclusion

20. For these reasons, having regard to all other matters raised, I conclude that the appeal should be dismissed.

Pete Drew
INSPECTOR



Appeal Decision

Site visit made on 6 July 2011

by **Jill C Kingaby BSc(Econ) MSc MRTPI**

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

Decision date: 2 August 2011

Appeal Ref: APP/R3325/A/11/2150293

Land to south of railway station, Station Road, Crewkerne TA18 8AU

- 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 Mr Robin Furby against the decision of South Somerset District Council.
 - The application Ref, 10/02454/OUT, dated 23 6 10, was refused by notice dated 4 10 10.
 - The development proposed is the use of land for residential development of 16 dwellings, new access and associated works.
-

Application for costs

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

Decision

2. The appeal is allowed and planning permission is granted for the use of land for residential development of 16 dwellings, new access and associated works at land to south of railway station, Station Road, Crewkerne TA18 8AU, in accordance with the terms of the application, Ref 10/02454/OUT, dated 23 6 10, subject to the following conditions:
 - 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
 - 4) All of the reserved matters shall be submitted in the form of one application to show a comprehensive and coherent scheme with respect to design, layout, plot boundaries, materials, appearance, landscaping, scale, existing ground levels and internal ground floor levels for the dwellings. The details shall be submitted to and approved in writing before any development is commenced. Development shall be carried out in accordance with the approved details.

- 5) No building hereby permitted shall be occupied until foul and surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in Annex F of PPS25, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 6) No development or demolition on site shall commence until a wildlife survey report has been submitted to and approved in writing by the local planning authority. The survey shall ascertain the likely presence on site and impact of the development on reptiles and badgers. The survey shall be undertaken by a suitably qualified person at an appropriate time of year. In the event of the survey concluding a potential impact on protected species, full details of a mitigation plan containing measures for the avoidance of harm, mitigation and compensation shall be submitted to and approved in writing by the local planning authority. The mitigation plan shall be fully implemented in accordance with its contents.
- 7) No construction deliveries or construction work shall take place between 0800 and 1800 hours Monday to Friday, 0800 and 1300 hours on Saturdays, nor at any time on Sundays, Bank or Public Holidays.
- 8) The proposed estate road, footways, footpaths, tactile paving, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details which have first been submitted to and approved in writing by the local planning authority. For this purpose, plans and sections indicating as appropriate, the design, layout, levels, gradients, materials and methods of construction shall be submitted to the local planning authority.
- 9) The proposed roads, including footpaths and turning spaces where applicable, shall be put in place so that, before it is occupied, each dwelling is served by a properly consolidated and surfaced footpath and carriageway to at least base course level.
- 10) The proposed alterations at the junction of the site access with the A356 shall be constructed in accordance with details shown on the submitted plan, Drawing No 22100/002/001 REVG. The alterations to the geometry of the junction shall be completed prior to the commencement of the

development hereby permitted, and surfacing shall be completed prior to the first occupation of any of the dwellings.

- 11) At the junction of the site access with the A356, there shall be no obstruction to visibility greater than 600mm above the adjoining road level within the visibility splays shown in Drawing No 22100/002/001 REVG. Such visibility splays shall be constructed prior to the commencement of the development hereby permitted and be maintained thereafter at all times.
- 12) No development shall take place until a scheme to address the risks associated with contamination of the site have been submitted to and approved in writing by the local planning authority. The scheme shall have the following components:
 - i) A preliminary risk assessment to identify all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; potentially unacceptable risks arising from the contamination of the site.
 - ii) A site investigation scheme based on i) to give a detailed assessment of the risk to all receptors including those off site;
 - iii) Based on the above, an options appraisal and remediation strategy giving full details of the remediation measures required and how these are to be undertaken.
 - iv) A verification plan providing details of the data to be collected to demonstrate that the works in iii) are complete, and identifying any requirements for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action.The scheme shall be implemented as approved.
- 13) If, during development, contamination not previously identified is found on the site, then no further development, unless otherwise agreed in writing with the local planning authority, shall take place until the developer has received written approval from the local planning authority for an amendment to the remediation strategy detailing how the unexpected contamination shall be dealt with. Development shall then continue in accordance with the amended strategy.
- 14) No development shall take place until details of how to achieve the following noise levels within the 16 dwellings have been submitted to and approved in writing by the local planning authority:
 - 35dB LAeq T in the bedrooms with windows shut and other means of ventilation provided, between 2300 hours and 0700 hours;
 - 40dB LAeq T in all habitable rooms with windows shut and other means of ventilation provided.The dwellings shall be constructed in accordance with the approved details.

Preliminary matter

3. The description of development has been taken from the decision notice rather than the application form, in order to describe most accurately what is planned. The application seeks outline planning permission with all matters except access reserved for future consideration. The existing site access to the A356,

on the southern side of the site would be enhanced. The indicative plans show that this would serve 16 dwellings. I have determined the appeal on this basis.

Main Issue

4. The main issue in this appeal is the effect of the proposed development on highway safety at the junction of the site access with the A356.

Reasons

General matters

5. The appeal site is immediately south of Crewkerne Railway Station, on the north-west side of Misterton village. A former coalyard, it is previously developed land and lies within the development limits of the settlement. The Council advised that there is no longer an opportunity to use the site for rail-related purposes such as a transport interchange. Housing development on the site would be acceptable in principle. The provision of affordable housing in line with local policy was offered, but this would need to be secured by way of a planning obligation under s106. No such obligation has been submitted and the Council has not refused the application on this basis. Whilst failure to achieve affordable housing may be regrettable, I have insufficient evidence to conclude that its omission justifies dismissing the appeal.
6. The Council's third reason for refusing the planning application indicated that there would be unacceptable levels of disturbance and noise for future occupiers of the intended dwellings from the tannoy at Crewkerne Station. However, at appeal stage, the Council advised that, for reasons unrelated to this site, the tannoy noise had been reduced to a barely discernible level. In addition, the Appellant had submitted an acoustics report to assess the effect of train noise on future occupiers. I am satisfied that a development could be designed for this site with acceptable noise levels for future residents.
7. Local residents of neighbouring properties expressed concern about the impact of the development on their living conditions. I consider that the development could be laid out and the site landscaped so as to respect the amenity of neighbours. The listed station building opposite plots 1-4 would require a quality of building form and layout on the site that respected the historic asset, but this could be secured at reserved matter stage.

Highway access

8. The Appellant produced a Transport Statement dated June 2010. This proposed improvements to the junction of the site's access with the A356 so that visibility for drivers exiting the site would be equal to 100m to the south and 36m to the north, measured to the nearside kerb line. Due to the road alignment, it was argued that a visibility splay of 41m to the north would be achievable, based on measurement to the centre of the nearside lane. The Highway Authority made no criticism of visibility to the south and I see no reason to disagree or comment further on that. However, visibility to the north is restricted by the bridge across the railway line. Measurements were made at my site visit of potential visibility in this direction which broadly confirmed the figures in the Transport Statement.
9. The Transport Statement included an assessment of traffic generation for the site if it were re-used as a coalyard, based on trip rates at another coalyard in

Crewkerne. It was calculated that the appeal site has the potential to generate 99 trips per day, which would be 26 more than the planned residential development for 12 houses and 4 flats over an equivalent time period. The Highway Authority disputed the estimated coalyard generation figures as they are based on comparison with a single site and the numbers were doubled to reflect differences in site size, without regard for local knowledge and information which suggested that actual trip rates had been much lower. The use as a coalyard ended some years ago, when traffic conditions would have been different, and there is little evidence to suggest that it would be reinstated, were this appeal to fail. I therefore attach limited weight to the possibility of the coalyard use being revived and higher trip rates resulting.

10. I consider that the proposal for housing development, shown as 16 new units on the indicative plans, would give a material increase in turning movements at the junction with the main road. Based on the Appellant's traffic speed surveys and Government guidance on stopping sight distance in Manual for Streets (MfS), it was contended that a visibility splay of 33m to the north would be required for users exiting the site access. This could be achieved, indeed exceeded, by the appeal proposal. However, the Highway Authority disputed its acceptability, arguing that MfS is not applicable in this case. It claimed that the A356 at this point is not a lightly trafficked residential route but functions mainly for the movement of traffic. The Design Manual for Roads and Bridges (DMRB) which seeks visibility splays of 2.4mx90m to the nearside carriageway in both directions should be applied.
11. The introduction to MfS 2007 stated that it focused on lightly-trafficked residential streets, but many of its key principles might be applicable to other kinds of street, for example high streets and lightly-trafficked lanes in rural areas. It confirmed that the design standards for trunk roads are set out in the DMRB. The A356 represents a main road linking the A303 to the north and Crewkerne with Bridport, Dorchester and Weymouth to the south. In addition and more locally, it gives direct access to the railway station, side roads and individual properties on the edge of Misterton. The A356 past the appeal site does not readily fit the definition of streets given in MfS 2007. It is not a trunk road but its identification in the Structure Plan as a County Route suggests that it is more than a street or lightly-trafficked rural lane.
12. The Inspector at an appeal in Alton (APP/M1710/A/07/2048487) found that the relevant highway there was 'a hybrid which displays characteristics of both' types of highway covered by MfS and DMRB. He did not support the use of DMRB and concluded that reduced visibility distances would not cause danger or inconvenience to users. MfS2 published in 2010 updates national advice, and recommends its use for any scheme affecting non-trunk roads, as a starting-point. Its application for roads with a speed limit of 30mph, as is the case of this section of the A356, is specifically mentioned. The use of DMRB for inter-urban, non-trunk roads should be in a way that respects local context, and only where MfS2 is insufficient or inapplicable (paragraph 1.3.1-1.3.4).
13. In this case, the Highway Authority observed that the potential danger comes from traffic in the nearside lane closest to the site access. The site access is located on the down slope from the adjacent railway bridge so that, given the restrictions to forward visibility, there may be insufficient time in practice, especially for a large vehicle, to stop. The Parish Council and local residents, with local experience of the road, have raised objections based on the

perceived unsafe position of the site access. The Highway Authority also expressed concern for cyclists, given their slow rate of acceleration, and urged that a precautionary approach be taken.

14. However, the Appellant provided uncontested evidence of traffic flows and speeds (85th percentile of 25mph) on this section of the A356 based on up-to-date surveys. Traffic accident data over the preceding 15 years was examined. Calculations of stopping sight distance took account of the road's gradient and the proportion of public service and heavy goods' vehicles. These supported the conclusion that satisfactory visibility for road users can be provided at the access point. Advice on provision for cyclists in Chapter 6 of MfS2 indicates that the junction would not be demonstrably unsafe for cyclists. The Appellant showed traffic calming measures immediately north of the bridge to hatch out a section of carriageway on Drawing 001 and the indicative plan. These could be introduced if they were considered helpful to enforce speed limits in the future, in the interests of road safety for all including cyclists.
15. Strict application of Policy 49 of the Somerset & Exmoor National Park Joint Structure Plan Review, on avoiding direct access to a County route, could rule out development of the appeal site, and that to the site immediately north of the railway station, which was granted permission under 10/03721/FUL. Paragraph 7.30 of the Plan Review explains that restricted access is sought primarily for road safety reasons and to be consistent with national advice in PPG13: Transport (1994). That document was superseded when PPG13 was revised in 2001. The Plan Review precedes MfS. I give little weight to this element of Policy 49 as it is based on outdated national planning guidance.
16. I am satisfied that the most recent national advice in MfS2 is applicable in this case, and that satisfactory visibility splays to the north of the site access can be achieved. The proposal would not result in material danger to highway safety at the junction of the site access with the A356. The proposal complies with the general aim of Structure Plan Review Policy 49 to provide safe access to roads of an adequate standard, and with Policy ST5 of the South Somerset Local Plan which requires a satisfactory means of access. The new residential road through the appeal site should be designed to secure safe conditions for pedestrians and cyclists, in accordance with Local Plan Policy TP4.

Conditions

17. In accordance with Circular 11/95, a number of planning conditions are necessary to make the proposed development acceptable. With reference to the list of conditions from the Council, Nos 1 and 2 as required by s92(2) of the 1990 Act are equivalent to my conditions 1-3. The Council's condition 3 is imposed to secure the comprehensive and high quality development of the site. I agree with the Appellant that Nos 4 and 5 are unnecessary as they would be addressed under condition 3 and reserved matters.
18. I have amended the wording of the Council's condition 6 to allow some flexibility over the use of SUDS, but accept the need to secure a satisfactory drainage system. On ecology, although the Appellant commissioned a relevant survey which provides a mitigation plan to protect species and habitats, this should be updated to secure effective protection. Condition 7 above limits the hours of construction activity to prevent noise nuisance to neighbouring residents. Conditions 8-11 are necessary to secure road safety at the access with the main road and on the site itself. In view of the site history and

coalyard use, conditions 12 and 13 to investigate and address contamination are needed.

19. Network Rail advised that noise/vibration conditions should be applied because of the proximity of the appeal site to the railway station. The Appellant's PPG24 Noise Assessment concluded that installation of standard thermal double glazing with acoustic trickle vents should enable acceptable noise levels within the dwellings to be achieved. I impose condition 14 to secure this outcome, in order to safeguard the living conditions of future occupiers.
20. Subject to these conditions, I conclude that the appeal should succeed.

Jill Kingaby

Inspector



Costs Decision

Site visit made on 6 July 2011

by Jill C Kingaby BSc(Econ) MSc MRTPI

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

Decision date: 2 August 2011

Costs application in relation to Appeal Ref: APP/R3325/A/11/2150293 Land to south of railway station, Station Road, Crewkerne TA18 8AU

- 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 Robin Furby for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of the Council to grant planning permission for residential development of 16 dwellings, new access and associated works.
-

Decision

1. The application for an award of costs is refused.

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 expense in the appeal process.
3. The Appellant contended that he incurred unnecessary or wasted expense at appeal in (i) supplying additional information to the County Highway Authority, on (ii) acoustics work countering the arguments on tannoy noise, and in (iii) preparing and administering the appeal. I address each in turn.
4. Paragraph B23 advises that planning authorities should give thorough consideration to statutory consultees such as the County Highway Authority. The Council, on this basis, adhered to the Highway Authority's view throughout the appeal that the Design Manual for Roads and Bridges (DMRB) and not the Manual for Streets (MfS) was the appropriate national guidance for judging acceptable visibility distance. Saved Policy 49 of the Structure Plan Review which named the A356 as a County road gave support for the opinion that MfS as published in 2007 would not cover such routes. The appeal decisions referenced by the Appellant highlight the fact that there was a gap in national policy at this stage. Each case had to be considered on its individual merits and with reference to specific site characteristics, as well as MfS. In my opinion, the A356 past the appeal site did not readily fit the definition of streets given in MfS 2007 and it was not self-evident that it should apply in this case.
5. The Appellant pointed out that the change in national planning policy with the publication of MfS2 occurred on 29 September 2010. This was within 5 working days of the Council's decision to refuse the current application on 4 October 2010. The updated national guidance gives firmer support for its

application to the appeal proposal, but it does not rule out the use of more stringent visibility standards where the context requires it. Whilst my conclusions in the appeal decision were not supportive of the Council's more precautionary stance, I am satisfied that its position in respect of the important matter of highway safety was arguable and not unreasonable. Its stance was supported by the Parish Council and some local residents.

6. The Council withdrew its objection to the proposal on the basis of noise from the railway station tannoy system. Its e-mail dated 5 January 2011 confirmed that, following a complaint from a local resident, South West Trains had been persuaded to reduce the noise level substantially. Since a local resident at a greater distance from the station than the appeal site complained about the tannoy, I am satisfied that it was appropriate for the Council to apply its third reason for refusal.
7. The Appellant's PPG24 Noise Assessment was dated Oct 2009 and it follows the approach outlined in Annex 1 of PPG24: Planning and Noise. Annex 3, paragraph 2, of the Guidance explains that local noise from station activities should be treated in the same way as noise from industrial and commercial uses ie. using guidance in BS4142. I have seen no substantive evidence of work on this basis related to the impact of noise from the tannoy. Therefore, it has not been demonstrated that the Council acted unreasonably on this point or that unnecessary expense was incurred by the Appellant in addressing it.
8. On preparing and administering the appeal, the principle is that the parties involved normally meet their own expenses (paragraph A7 of C03/2009).
9. For the above reasons, the application for an award of costs fails.

Jill Kingaby

INSPECTOR



Appeal Decision

Hearing held on 5 July 2011

Site visit made on 5 July 2011

by **Clive Hughes BA (Hons) MA DMS MRTPI**

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

Decision date: 6 September 2011

Appeal Ref: APP/R3325/a/11/2148267

Land OS 4724 Hare Lane, Broadway, Ilminster, Somerset TA19 9LN

- 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 Darren Whiteway against the decision of South Somerset District Council.
 - The application Ref 10/02754/COU, dated 26 June 2010, was refused by notice dated 13 October 2010.
 - The development proposed is change of use of land – private gypsy and traveller caravan site – stationing of one mobile home.
-

Decision

1. The appeal is allowed and planning permission is granted for the use of land as a site for one mobile home (private gypsy and caravan site) at Land OS 4724 Hare Lane, Broadway, Ilminster, Somerset TA19 9LN in accordance with the terms of the application, Ref 10/02754/COU, dated 26 June 2010, subject to the eight conditions set out in the Annex to this Decision.

Procedural matters

2. The Council described the development as the use of land as a site for one mobile home (private gypsy and caravan site). The appellant used this description for this appeal and so it is used in this Decision. The development has commenced, the site is occupied by the appellant and his son. There is a vehicular access, which pre-dates the appellant's occupation, and a caravan is stationed on the site. Vehicle parking has been provided.

Main Issue

3. The main issue is whether the development accords with policies in the development plan and national guidance and advice which promote social inclusion and sustainable patterns of development.

Reasons

4. The appeal site lies in a countryside location outside the defined settlement boundary of Broadway. There is linear housing that runs west from the settlement and along Hare Lane towards the appeal site, but this stops well short of the site. Hare Lane is a narrow country lane without street lighting or footways, and, at the appeal site, is subject to the national speed limit. Broadway, which lies about 1.6km distant, offers a few facilities and services, including a primary school, bus stop, surgery and public house. There are further facilities at Horton, a similar distance away, including a shop.

5. Policies in the *Somerset & Exmoor National Park Joint Structure Plan Review 1991-2011* (2000) and the *South Somerset Local Plan 1991-2011* (2006) seek to promote sustainable patterns of development and minimise the use of the private car. Policy HG11 of the Local Plan, which relates to residential sites for gypsies and travellers, says that such proposals will be permitted (outside of land that is severely constrained such as AONBs and SSSIs) provided certain criteria are met. These criteria include (2) that the site is reasonably well related to schools and other community facilities. Supporting paragraph 10.67 says that such sites should "be *reasonably* convenient for schools and other community facilities such as public transport, shops, health centres and public telephones." The term *reasonably*, although italicised, is not defined. This policy is broadly restated in the Council's emerging Core Strategy in which bullet point 4 of Policy HG6 repeats criterion (2) of Policy HG11.
6. The development plan pre-dates the publication of ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*. This advises that rural settings, where not subject to special planning constraints, are acceptable in principle. The Circular also states that in assessing the suitability of such sites, local authorities should be realistic about the availability of alternatives to the car in accessing local services. This advice is restated in paragraph 8.50 of the emerging Core Strategy.
7. Some advice concerning the definition of "reasonable distances" is to be found in PPG13 *Transport*, which advises that walking offers the greatest potential to replace short car trips, particularly under 2km, and cycling for journeys under 5km. The Council has previously found distances in excess of those present in this case to be acceptable, although of course there may have been other considerations that led to those decisions. In an appeal Decision in South Somerset, dating from 2009, an Inspector identified a site to be 2.6km from a primary school, 6.5km from a surgery and 10km from a secondary school, and concluded that such distances are not great in this rural location. He concluded that there was no valid objection on grounds of sustainability.
8. In this case the nature of the road would be likely to deter children from walking to the primary school but for any adults there are facilities within a comfortable walking or cycling distance. While the appellant's child is at school in Taunton, to be near his mother, this site could in future be occupied by residents with a need to access the local school. However, the distances are not great and other appeal decisions show that longer distances can be acceptable.
9. I have also given weight ODPM Circular 01/2006 which advises that issues of sustainability should not only be considered in terms of transport mode and distances from services. The Circular sets out other matters which should be considered and these have been carried forward in the emerging Draft PPS *Planning for traveller sites*. While this emerging advice carries limited weight, the fact that it restates this part of the extant Circular is pertinent.
10. The distance of the site from both the settlement boundary and the ribbon of dwellings along Hare Lane reduces the opportunities for the integration of the site occupants with the local community. However, no sites closer to the settlement have been put forward. Indeed, it is common ground between the main parties that there are no alternative sites that are suitable, available and affordable. The Council is not intending to provide any additional sites through the development plan process; it is relying on a supply of suitable sites being

promoted by the gypsy and traveller communities. The provision of a settled base gives the opportunity for the appellant and his son to integrate with the local community in a way which would not be possible with a travelling lifestyle. In these circumstances the lack of opportunities for integration arising from the distance of the site from the established community is not harmful.

11. I conclude that this site is sustainable in terms of the provision of sites for gypsies and travellers; its occupation on a settled basis presents opportunities for the site occupiers to integrate with the local community. There is therefore no conflict with the development plan.

Conditions

12. I have taken account of the conditions discussed at the Hearing. Occupation of the site is limited to gypsies and travellers as any other occupation would not accord with the development plan. As personal circumstances are not relied upon there is no reason to limit the occupation to the appellant and his resident dependants. Occupation of the site is limited to a single mobile home in accordance with the terms of the application. Conditions have been imposed that limit the number of touring caravans on the site to one; prohibit commercial activities; prohibit the erection of any buildings or structures; and restrict the size of vehicles in the interests of the visual amenities of the area. The submission of a development scheme concerning such factors as the site layout, external lighting, gates and landscaping is necessary in the interests of the visual amenity of the area. Details of foul and surface water disposal are necessary as these have not been submitted. A scheme for the access road, visibility, parking and turning facilities is necessary in the interests of highway safety.

Conclusions

13. I recognise that there has been a high level of public concern about this proposal. I have taken full account of the written representations made by the Parish Council and nearby residents in respect of both the planning application and this appeal and of the views of those who participated at the Hearing. With regard to the perception of unfairness arising from the occupation of the site, I have had regard to the fact that the Council has a five-year supply of sites for housing for the settled population but no supply whatsoever for the travelling community. No alternative, suitable, available, affordable sites for gypsies and travellers have been provided; none are proposed. Concerning the unauthorised occupation of the site, it is relevant that the appellant used an agent who sought the views of Council Officers before the first planning application was made in early 2009 and that the Officer supported the proposal and recommended to the Committee that the application be approved. It is only since the appellant had to vacate his previous site that he moved onto the land on 30 April 2011.
14. With regard to highway safety issues, the development would not result in a significant increase in traffic along this country lane and the Highway Authority raised no objections. There is an existing access to the field and adequate visibility can be achieved. The principle of gypsy and traveller sites in the countryside is acceptable and ODPM Circular 01/2006 says that proposals should not be rejected if they would only give rise to modest additional daily vehicle movements. Concerning the visual impact, I have noted the proximity

of the AONB and that the development on the site is only partly screened by existing hedges. The Council's Landscape Architect has not raised a landscape character objection. Conditions have been imposed concerning the siting of the proposed mobile home and the provision of additional landscaping to address this matter. However, it would not be reasonable to require the development to be hidden from public view as this would fail to promote social inclusion. I have taken account of all the other points raised but none are sufficient to outweigh my conclusions on the main issue.

15. Overall, therefore, I conclude that the proposals accord with the provisions of the development plan, the emerging Core Strategy, Government advice and emerging Government advice. I therefore allow the appeal.

Clive Hughes

Inspector

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch BA(Hons) MSc PhD MA MRTPI	Murdoch Planning
Darren Whiteway	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Linda Hayden	Planning Officer, South Somerset DC
Andrew Gunn	Planning Officer, South Somerset DC
Cllr Linda Vijeh	District Councillor, Neroche Ward

INTERESTED PERSONS:

Paul Trueman	Chairman, Broadway Parish Council
Sid Painter	Local resident
Hamish Grant	Local resident
Martin Hallam	Local resident
Margaret Hallam	Local resident
Chris Weatherill	Local resident
Christine Trueman	Local resident
Roger Sanders	Local resident
Christine Brenton	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appeal decision APP/R3325/A/10/2140256 – Land at Merriott Road, Hinton St George dated 3 June 2011
- 2 Plan showing boundary of settlement area
- 3 Bundle of photographs showing caravan on the site

PLANS

- A Site location plan
- B Site layout plan

ANNEX: Schedule of Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No buildings or structures shall be constructed on the site other than those allowed by this permission.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days, or such longer period as considered reasonable of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting of the mobile home, hardstanding, access drive including its surfacing materials, parking, turning and amenity areas; the means of foul and surface water drainage of the site; proposed external lighting within the site; improved visibility splays at the site access; details of the access gates to Hare Lane; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 6) There shall be no external lighting on the site other than as approved under condition (5) above.
- 7) The parking and turning areas as provided pursuant to condition (5) above shall be kept available for such uses at all times for the duration of the development.
- 8) There shall be no obstruction to visibility greater than 900 mm above the level of the adjoining road within the visibility splays provided pursuant to condition (5) above.