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## Appeal Decision

Site visit made on 5 September 2016

**by Thomas Bristow BA MSc MRTPI**

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

**Decision date: 26 September 2016**

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**Appeal Ref: APP/R3325/W/16/3146588**

**Old Mill Cottage, Langport Road, Huish Episcopi, Langport TA10 9QT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
  - The appeal is made by Mr Chris Macklin against the decision of South Somerset District Council.
  - The application Ref 15/02894/FUL, dated 22 June 2015, was refused by notice dated 29 February 2016.
  - The development proposed is described on the application form as *'to erect a mixed use shed building to house historic tractors and to allow for the storage of items relating to the applicant's part-time and informal online trading business. As such, the application also entails a change of use from agricultural land to allow for the commercial element of the building's use. A number of existing sheds in poor repair will be replaced as part of the process. The proposals also specify the erection of an open-fronted car port. It is proposed that half of the development will be designated as B8 (Storage or Distribution) space, whilst the remaining will be designated C3 (Dwelling House) space.'*
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - 1) whether or not it has been demonstrated that the proposal would be acceptable in relation to the safe operation of the highway network in the vicinity of the appeal site, and
  - 2) the effect of the proposal on the character and appearance of the area, with particular regard to the setting of the Grade II Listed Rose and Crown public house.

### Reasons

#### *Highway network*

3. Old Mill Cottage (the 'Cottage') is set within a narrow lengthy plot. There are presently two vehicular accesses to the land associated with it from the A372, one directly in front of the property and the other beyond its easterly side
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elevation.<sup>1</sup> The latter provides access by means of a gravelled area of land to the location of the buildings proposed, and is the access subsequently referred to in this decision. The access also serves parking provision associated with the Rose and Crown, which is also presently advertised as Eli's Inn and which is served by a further vehicular access.<sup>2</sup>

4. The Council's officer report associated with the original applications (the 'officer report') sets out that the South Somerset District Council Highway consultant expressed concerns regarding the potential increased use of the access resulting from the development proposed. The appellant was consequently invited to provide further information related to the visibility from which the junction benefits and details of the likely additional intensity and type of vehicular movements that would arise. I am satisfied that the appellant has had the opportunity to provide relevant information in this respect.
5. The appellant has explained that, although it is not the intention that the proposal would generate additional traffic, between an additional 5 and 10 vehicular movements a week may result.<sup>3</sup> Whilst the Council ultimately arrived at a different view than the recommendation made within their officer report,<sup>4</sup> therein it is nevertheless indicated that '*the primary use of the buildings would be for the extended domestic use of the site*', and that the access currently benefits from a reasonable level of visibility.
6. I understand that the appellant already conducts some commercial activity from the appeal site, which he describes as a hobby related to the trading of household items. The officer report similarly summarises that this activity amounts to a small scale '*almost ancillary level of activity*'. However there is no evidence before me to indicate that any of the appeal site benefits from extant permission for a commercial or business use, and it therefore follows that the commercial trading presently undertaken is secondary in nature to the established residential use. There is no indication as to the extent of land or floorspace currently given over to these commercial activities.
7. Although the appellant contends that any existing buildings within the appeal site are now immune from enforcement,<sup>5</sup> the appeal site encompasses a far more extensive area of land than is established domestic curtilage. Application Ref 98/01620/COU set the extent of domestic curtilage associated with the property, which falls only slightly beyond the furthestmost elevation of the proposed car port. This is significant as the entirety of what is described as the 'mixed use shed' would be located beyond the established domestic curtilage.
8. According to the stated dimensions on drawing entitled AB5258-2/4 supporting application Ref 15/02894/FUL, the floorspace of this element of the proposal would amount to approximately 142 square metres. Section 18 of the associated application form indicates that 102 square metres of use class B8

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<sup>1</sup> Notwithstanding condition 6 of planning permission Ref 98/01620/COU, the access directly in front of the property was open and appeared to be available for vehicular use at the time of my site visit.

<sup>2</sup> I note that the appellant explains that access to the parking provision associated with the public house is by way of an informal agreement, and that the access itself is within the same ownership as the Cottage.

<sup>3</sup> With reference to paragraphs 6.11.1 and 6.9.2 of his appeal statement.

<sup>4</sup> Members are not bound to accept the recommendations made by their officers, but must act reasonably on the basis of valid material planning reasons in doing so.

<sup>5</sup> With reference to the provisions of Section 171B of *The Town and Country Planning Act 1990* as amended.

'storage or distribution' floorspace would be created.<sup>6</sup> Therefore whilst a proportion of the mixed use shed is intended to relate to domestic use, the vast majority would relate to commercial use.

9. Policy TA5 '*Transport impacts of new development*' of the *South Somerset Local Plan 2006-2028* adopted on 5 March 2015 (the 'Local Plan') establishes that development should be served by safe access, and that the nature and volume of traffic generated must not compromise the safe operation of the road network. Likewise the Framework sets out that decisions should take account of whether safe and suitable access to the site can be achieved for all people, and that severe residual cumulative impacts of development may justify refusal of permission on transport grounds.<sup>7</sup>
10. The mixed use shed represents a significant increase in the capacity of the appeal site to host commercial activity, of a scale which appeared to me to compete with rather than being subservient to that of the Cottage. I appreciate that it is not the current intention of the appellant to significantly increase the intensity of commercial activity conducted on site as a result of the proposal. However this intention may not be enduring, shared by future owners, and in my view could not be directly limited by a suitably precise or enforceable condition.<sup>8</sup>
11. As described above, the commercial element of the proposal would be beyond the established residential curtilage of the property and may be accessed separately from the Cottage. For these reasons, and in the absence of any evidence as to how the predicted increase in vehicular movements that may result from the proposal has been calculated, it appears to me that the proposal clearly has the potential to result in a significant additional intensity of commercial use and consequently substantially higher number of vehicular movements than that which presently occurs or that which has been predicted.
12. Whilst the existing access appears to offer a reasonable level of visibility, there is also no information before me to establish definitively whether it accords with the relevant standards set in Section 7 of the Government's *Manual for Streets* (MFS).<sup>9</sup> There is likewise no information before me in respect of the type of vehicular movements that would be associated with the commercial element of the proposal, or indeed as to whether there are any previous recorded safety incidents in this location. Whilst the relevant access was approved in 1998, this pre-dated the publication of MFS and the Framework, and in any event it does not follow that an access suitable for residential use is also appropriate to accommodate commercial vehicular usage.
13. I would further note that that the recommendation for approval within the officer report is predicated on the proposal representing a modest change compared to the existing situation, which is not in my view demonstrably the

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<sup>6</sup> As established in the Schedule to *The Town and Country Planning (Use Classes) Order 1987* as amended (the 'UCO'). The proposed car port is variously described as for the '*domestic storage of historic cars*', i.e. within use class C3 '*dwellinghouses*' as defined by the UCO and for 'mixed use' in the evidence before me.

<sup>7</sup> At paragraph 32 of the Framework.

<sup>8</sup> With reference to the tests in paragraph 206 of the Framework.

<sup>9</sup> Whilst there are photographs of this access within the appellant's appeal statement, no visibility splays are indicated within any information before me. The *Planning Practice Guidance*, Reference ID 21a-015-20140306, further sets out that a location plan accompanying an application should '*include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays...*'.

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case, and moreover on the basis of imposing various conditions. The suggestion is made that the intensity of commercial use could be tied by condition *'to the occupier of the main dwelling'*. The *Planning Practice Guidance* (the *'Guidance'*) however, clearly establishes that *'planning permission runs with the land and it is rarely appropriate to provide otherwise'*.<sup>10</sup> Moreover such a condition would not be effective in limiting the intensity of use of the commercial element of the proposal or associated vehicle movements: any intensity of commercial use could result provided that it was connected with the occupant of the Cottage. Similarly a condition requiring that the commercial use of the building was ancillary to the Cottage would in my view fail the test of enforceability given the scale and relatively independent location of the development proposed as identified above.

14. Prohibiting the sale of cars or tractors from the site via condition would not be relevant to the development proposed nor effective in limiting vehicular movements, given that the commercial use is stated as relating to the sale of *'household items'*. Whilst it is also suggested in the officer report that a condition could define the *'parts of the site that can be used for domestic or commercial purposes'*, there is no such specificity in the information presently before me, and as such a condition could not reasonably be imposed in this respect.<sup>11</sup>
15. For the above reasons, particularly the lack of robust evidence in relation to the vehicular movements that may arise as a consequence of the nature of the development proposed, I cannot reasonably find that the proposal would not entail severe impacts or that suitable access would be achieved. Therefore on the basis of the evidence before me it has not been demonstrated that the proposal would be acceptable in relation to the safe operation of the highway network in the vicinity of the appeal site. Accordingly the proposal conflicts with the relevant provisions of policy TA5 of the Local Plan and with relevant elements of the Framework.

#### *Character and appearance*

16. The Cottage is a modest detached dwelling of relatively modern appearance located within the village of Huish Episcopi which is characteristic of the prevailing type and design of nearby properties. Its narrow linear plot, which is generally demarcated by hedgerows and mature trees, slopes down steeply from west to east and leads to the countryside bounding the settlement towards the north. The dispersed form of Huish Episcopi, the presence of undeveloped land falling irregularly between buildings, and views of the surrounding countryside from many locations within the village lend the area a clearly rural character.
17. Four outbuildings are currently present arranged in a line alongside the eastern boundary of the appeal site: a substantial stone-faced garage and three modest timber-clad sheds. All appeared at the time of my site visit to be variously used for the storage of tractors, vehicles and miscellaneous

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<sup>10</sup> Reference ID: 21a-015-20140306.

<sup>11</sup> The Guidance, Reference ID: 21a-012-20140306, establishes that conditions that would make development *'substantially different from that set out in the application'* should not be used, which would be the case here were such a condition to be imposed.

household items. Several further cars and tractors were openly stored to the front of the Cottage and scattered around the appeal site.

18. To the east the appeal site abuts a hardsurfaced area providing parking associated with the Rose and Crown which lies a short distance away, and an open flat field which is served by an access from this area (hereafter referred to simply as 'the field'). The historically intact principal elevation of the public house facing the A372 incorporates rough-cut stone courses, and the property features a thatched roof, features which are commensurate with its rural origins.
19. There are relatively few locations from which the appeal site and the Rose and Crown are visible in conjunction with one another, being separated by the field, intervening hedgerow and a stream. Whilst certain elements of the public house facing westwards towards the appeal site are more modern additions, and the area around the public house incorporates recently installed hardsurfacing and fencing, the presence of such features does not justify unacceptable development in the present.
20. I understand that the field is used for both community events and for functions which provide a direct income associated with the public house. Many nearby residents have explained that the field is as a consequence of significant importance to the village, and its value as such derives from its natural and open character. The Rose and Crown, which dates from around 1800,<sup>12</sup> would have emerged originally to serve residents of the surrounding rural community. Whilst the surrounding area is predominantly residential, I have nevertheless identified that it retains a rural character which is reflected in, and reinforced by, the characteristics of the field. As such the field, in my view, contributes to a historic understanding of the origins of the public house.
21. Policy EQ2 '*General Development*' of the Local Plan establishes that development must promote local distinctiveness and preserve or enhance the character and appearance of its surroundings. Policy EQ3 '*Historic Environment*' further sets out that all development must safeguard or enhance the significance, character, setting and local distinctiveness of heritage assets. Similarly Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires me to have special regard to the desirability of preserving the setting of a Listed Building. Likewise The *National Planning Policy Framework* (the 'Framework') sets out that great weight should be given to the conservation of designated heritage assets, that any harm that would result from proposed development should be balanced against the public benefits that would arise.<sup>13</sup> Neither the Framework,<sup>14</sup> nor advice produced by Historic England confines the setting of a heritage asset to visual matters alone.<sup>15</sup>
22. On account of its limited height and the screening that would be afforded by the Cottage and the existing garage which would be unaffected by the development proposed, the car port would be barely perceptible from most

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<sup>12</sup> As indicated on the Historic England List (entry Number: 1235466), although a number of nearby residents have indicated that its origins may be more distant.

<sup>13</sup> Including at paragraphs 132- 134.

<sup>14</sup> Annex 2 of the Framework defines 'setting' in this context as '*the surroundings in which a heritage asset is experienced*'.

<sup>15</sup> *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets*.

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- public vantage points. However the mixed use shed would be significantly greater in scale and bulk, measuring approximately 27 metres in length and achieving a maximum height at certain points of approximately 3.8 metres, and would be situated very close to the eastern boundary of the appeal site. It would be timber clad with a sheet roof coloured green and of utilitarian design commensurate with that of many prefabricated agricultural buildings.
23. Only a small element of the mixed use shed would be visible between the flank elevation of the Cottage and its associated garage from vantage points along the A372. As a consequence, and on account of its understated design, from these locations in my view the shed would not appear to unduly encroach into the surrounding countryside or be readily perceived as incongruous with reference to the built form of its surroundings.
24. At the time of my site visit partial views existed of the outbuildings currently present from the field and parking area associated with the Rose and Crown through less dense sections of the hedgerow bounding the appeal site. It therefore appeared to me that as a consequence of its height and scale, the mixed use shed would be apparent from vantage points towards the east, particularly when deciduous tree cover is reduced during winter months (notwithstanding that the proposal includes the augmentation of existing planting along its eastern boundary with indigenous species matching those currently present).<sup>16</sup>
25. I have identified above that the proposal clearly has the potential to result in a significant additional intensity of commercial use compared to the present situation, which cannot reasonably be tempered by the imposition of associated conditions. As a consequence of this finding, and of the proximity of the mixed use shed to the field, it is highly likely that vehicular movements and commercial noise would be apparent to those making use of the field in addition to some degree of greater visual enclosure.
26. The development would therefore erode the natural rural characteristics of the field, which are both held to be important locally and significant in respect of an understanding of the historic origins of the Rose and Crown. Some harm to the historic rural setting of the Listed Building would therefore result. However in my view this harm cannot reasonably be described as substantial for the reasons identified in paragraph 19 of this decision. I am consequently not convinced on the basis of the evidence before me that this effect can be described as amounting to a '*significant or total loss*' of the public house as is the test set by policy EP15 '*Protection and provision of local shops, community facilities and services*' of the Local Plan. Nevertheless it is necessary to consider whether the public benefits of the proposal outweigh the harm that would result.
27. I acknowledge that the proposal would be beneficial to the appellant, and that the Framework both encourages flexible working practices and supports the sustainable growth of all types of business in rural areas. Critically, however the appellant sets out in final comments submitted at appeal that some level of commercial activity '*is likely to occur irrespective of the outcome of this*

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<sup>16</sup> Figure 3 of the appellant's appeal statement clearly shows that screening afforded by trees is significantly reduced in winter months.

*application'*. As such the economic benefits of the proposal do not carry significant weight in its favour.

28. The appellant further avers that the development proposed would allow for cars presently parked to the front of the Cottage to be relocated behind the dwelling and enable the various tractors currently stored openly behind the property to be suitably accommodated, thereby improving the general appearance of the site. However there is no evidence before me to indicate that improving the appearance of the appeal site in this respect is reliant on the proposal before me, and in any event there are other powers available to the Council to remedy adverse effects resulting from the condition of land.<sup>17</sup> There is likewise nothing to indicate that the improvement of drainage provision on site is dependent on the outcome of this appeal.
29. Therefore whilst the proposal would have a comparatively limited visual effect in the wider area, it would nonetheless fail to preserve the setting of the Listed Building, resulting in harm which is not outweighed by the limited public benefits that would arise. For the above reasons I therefore find that the proposal would not have an acceptable effect on the character and appearance of the area with particular regard to the setting of the Grade II Listed Rose and Crown public house. Consequently in this respect the proposal fails to comply with the relevant provisions of policies EQ2 and EQ3 of the Local Plan and with relevant elements of the Framework.

### **Other Matters**

30. I have noted the representations that have been made by many interested parties in relation to the potential effects of the proposal in respect of surface water run-off and contamination. However these matters do not form part of the Council's case, and there is nothing in the evidence before me to indicate that, subject to suitable mitigation measures, the proposal would be unacceptable in these respects. I have also noted representations made in relation to alleged breaches of planning control related to the appeal site, however have determined the appeal based on the cases that have been put to me, and it is for the local planning authority to consider whether or not any associated action is necessary here.

### **Conclusion**

31. For the above reasons, and taking all other matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. The proposal does not represent sustainable development, and I therefore conclude that the appeal should be dismissed.

*Thomas Bristow*

INSPECTOR

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<sup>17</sup> For example notices served under Section 215 'Power to require proper maintenance of land' of the Town and Country Planning Act 1990 as amended.