

Appeal Ref: APP/Q3305/W/20/3247050

DX: 43001
Shepton Mallet

Application Ref: 2019/2549/OTS

Direct Line: 01749 341513

Please Reply to: James U'Dell

24th June 2020

Dear Sir/ Madam,

TOWN & COUNTRY PLANNING ACT, 1990

Appeal by Mr Jason Warmisham against the refusal of application 2019/2549/OTS for outline planning permission for access, appearance, layout and scale with other matters (landscaping) reserved for the erection of two detached dwellings at Land Adjacent to The Barn, The Barton, Norton St Philip, Somerset, BA2 7NE

1.0 INTRODUCTION:

- 1.1 My name is James U'Dell. I hold a BSc (Hons) degree in Geography, an MSc in Planning Practice and Research. I am employed as a Senior Planning Officer by Mendip District Council.
- 1.2 The appellant has appealed against the refusal of outline application 2016/1293/OTS, which was refused by the LPA under delegated powers on the 30th January 2020, for the following reasons:

- 1. *The development proposes a harmful encroachment of built development into an Open Area of Local Significance (OALS) to the detriment of its distinctive local character and appearance. The limited benefits of the development for housing supply do not outweigh the visual harm to the OALS and the development proposes limited economic benefits and will not extend the range of facilities available to the local community. As such there are no special exemptions associated with the development. The proposal is therefore contrary to the provisions of Policies DP1, DP2 and DP4 of the Mendip District Local Plan and the guidance contained under Part 15 of the NPPF.***
- 2. *In the absence of a suitable up-to-date ecological survey, it has not been adequately demonstrated that the development would not create adverse harm towards protected species. The proposal is therefore contrary to the provisions of Policy DP5 and DP6 of the Mendip District Local Plan and the guidance contained under Part 15 of the NPPF.***

- 1.3 The Inspector is asked to refer to the case officer's report, provided under Appendix 8, for the LPA's appeal case/ statement. In addition to the supporting appendices.
- 1.4 Some further points have been highlighted below, which also address relevant issues raised by the appellants in their supporting statement.
- 1.5 The Local Planning Authority has accepted that it does not have a secure 5 year supply of housing and the application was correctly determined against the criteria of Paragraph 11d of the National Planning Policy Framework (see case officer report in Appendix 8). Indeed the general principle of the development was considered to be acceptable as the site is located within the development limits of the village of Norton St Philip. However the site is part of a formally designated '*Open Area of Local Significance (OALS)*', protected under Policy DP2 of Part 1 of the Mendip District Local Plan (LPP1).
- 1.6 Regardless of the LPA's position in regards to demonstrating a secure 5 year supply of housing, the '*Local Development Policies*' (DP) policies (see Appendix 12), which make up Part 1 of the Mendip District Local Plan (LPP1) are and can be afforded significant weight in the decision making process, as they are part of the adopted Development Plan for Mendip.
- 1.7 Policy DP2 of the LPP1 says that permission will not be granted for development which would harm the contribution to distinctive local character made by Open Areas of Local Significance as identified on the Policies Map. The site is within an Open Area of Local Significance defined by LPP1.
- 1.8 LPP1 defines the site as part of an Open Area of Local Significance, designated for its significant contribution to the quality of the built environment. The designation is applied to spaces which contribute to the locally distinctive character of an area for a variety of reasons, including allowing views out of an otherwise built up street scene, allowing views of significant local features, enhancing the setting of a settlement or creating a sense of space. The OALS were defined by a previous Local Plan, and have been retained because they warrant continued protection.
- 1.9 The LPA's decision to withdraw Local Green Spaces (LGS) from the Local Plan Part 2 (LPP2) does not mean the OALS designation has been superseded. The withdrawal of LGS from the examined LPP2 does not change the status of the OALS as adopted policy. The LPP2 Inspector has been silent on the status of the OALS and in any event has no jurisdiction to remove OALS from the adopted LPP1. As such the LPA has correctly determined the application against the adopted requirements of the Development Plan and considers that the benefits carried by the development would not outweigh the harm to the OALS. Therefore the refusal of planning permission is fully justified and should be upheld.

- 1.10 The Inspector for the previous appeals (see Appendix 1) concluded that significant harm (emphasis added) would be caused to the character and appearance of the OALS, and agreed that the site was appropriately designated as OALS. The Inspector considered that:

“Norton Brook, and the green spaces on either side of it, provides an attractive backdrop to the properties which surround it and from which this space can be appreciated. It provides tranquility and relief from surrounding development and gives the area a spacious and semi-rural feel which is appropriate given its edge of countryside location. For these reasons it makes a significant contribution to the character and quality of the area.” (Appendix 1, paragraph 6).

- 1.11 The Inspector concluded that the OALS requires continued protection:

“The appellants question the continued designation of the OALS and state that a review is long overdue. This may be so. Nevertheless, from the evidence before me, and based on my own observations above, the appellants assertions on this matter do not in any way reduce the harm that I have identified nor do they lead me to conclude that the OALS no longer warrants protection in respect of these two appeals. Furthermore, the proximity of the adjoining Green Belt and open countryside to the OALS does not diminish its significance” (Appendix 1, paragraph 11).

- 1.12 Paragraph 99 of the NPPF says that:

“The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period”.

- 1.13 Paragraph 100 of the NPPF goes on to suggest that:

“The Local Green Space designation should only be used where the green space is:

- a)** in reasonably close proximity to the community it serves;*
- b)** demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and*
- c)** local in character and is not an extensive tract of land”.*

- 1.14 The emerging Norton St Philip Neighbourhood Plan (see Appendix 9), designates Ringwell Meadows as Local Green Space (under LGSNSP004), which is a material consideration, as the village of Norton St Philip have sought to continue to protect this valued open space/ green area, which the LPA and NSP Parish

Council consider meets all three of the relevant tests for LGS designation, as set by paragraph 100 of the NPPF. It is also evident from the volume of objection to the current application/ appeal that there is strong local opposition to developing Ringwell Meadows OALS and solid reasons for retaining it as a protected open space, as confirmed by the previous planning Inspector in the appeals included under Appendix 1.

- 1.15 An update on the Judicial Review and Court of Appeal decision relating to the Norton St Philip Neighbourhood Plan (NSP NP) has been attached under Appendix 10 and 11, with Appendix 11 being the latest position.
- 1.16 The LPA acknowledges that the NSP NP is still subject to legal challenge in regards to Policy 5 (Local Green Spaces), specifically. However the legal challenge was comprehensively dismissed at the first instance and there is no guarantee that a different view will be taken, with every prospect that the case will be dismissed again.
- 1.17 The referendum on the NSP NP is thus being held back by the outstanding appeal and the Covid-19 situation, however the LPA would argue that close to significant weight should be afforded to the NSP NP and the continued protection of Ringwell Meadows as a re-defined 'Local Green Space'. The site remains protected as an OALS regardless, despite the explicit exclusion of the term 'Open Area of Local Significance or OALS', from the revised NPPF (2019). Arguably OALS does fall within/ under the definition of a 'Green Area', as per paragraph 99 of the NPPF, so the LPA would argue that the assessment of this application does have full regard to the current policy framework.
- 1.18 In addition to the weight afforded to Policy DP2 and the NSP NP, and whilst emphasising the economic and social benefits of development, including new housing, the NPPF makes it clear that the planning system also has an environmental role. To achieve sustainable development, the economic, social and environmental roles of the planning system should not be undertaken in isolation, as they are mutually dependent. In defining the environmental role of the planning system, paragraph 8 of the NPPF emphasises the need to *protect and enhance the natural and built environment*. Section 15, paragraph 170 of the NPPF also acknowledges the need for the continued recognition of... *"the intrinsic character and beauty of the countryside"...* and for there to be a sustained need for planning to contribute to conserving and enhancing the natural environment. It is considered that collectively the environmental, social and economic dimensions/ roles of sustainable development are not achieved by the development, as such the appeal proposal does not represent '*Sustainable Development*'.
- 1.19 It is considered that the development will fail to maintain or enhance the natural environment in this locality as the addition of the dwellings proposed does not represent a proposal that protects the countryside (which in this case is part of a designated OALS) for its own intrinsic character and beauty, due to the urbanising

impact and encroachment of the development, (as described in the case officer report in Appendix 8).

- 1.20 Policy DP1 of the LPP1 (Appendix 12) requires that *“All development proposals should contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district”* (part 1.)... *“Proposals should be formulated with an appreciation of the built and natural context of their locality recognising that distinctive street scenes, townscapes, views, scenery, boundary walls or hedges, trees, rights of way and other features collectively generate a distinctive sense of place and local identity. Such features may not always be designated or otherwise formally recognised”*. The development does not respect the local distinctiveness of this locality which is characterised (and designated) by the defining features of the OALS (as described in the case officer report in Appendix 8).
- 1.21 Policy DP4 of the Mendip District Local Plan (see Appendix 12) confirms that *“Mendip district is defined by landscapes”* and suggests that *“proposals that would, individually or cumulatively, significantly degrade the quality of the local landscape will not be supported”*. The need to protect and enhance valued local and natural landscapes is also emphasized by Part 15, paragraph 170 of the NPPF. It is considered that the development will degrade the quality of the natural landscape in this locality, which is defined by the defining features of the OALS and the green links to the wider countryside and green belt beyond (as described in the case officer report in Appendix 8).
- 1.22 In terms of the associated economic and social benefits of the development. It is acknowledged that the site is located within the development limits of the village and will carry limited social and economic benefits, limited to the construction process. However, the benefits for housing supply in this case are very limited given that Norton St Philip has already massively exceeded its housing targets for the plan period 2006-2029 and the dwellings proposed are substantial (4+ beds) market dwellings and not affordable housing, or aimed at meeting any identified local/ community need. The proposal does not offer significant wider economic benefits and in addition the site has not come forward formally as a ‘Self-Build’ site (i.e, not on the Self-Build register). As such it is considered that there are no special exemptions or benefits associated with the development that would mitigate/ compensate for the level of visual harm to the OALS, as discussed/ outlined above. The benefits for housing supply (2 units) are afforded limited weight having regard to the current scale of growth and huge over-provision of housing in Norton St Philip.
- 1.23 The LPA considers that reason for refusal 1 is justified as *“The development proposes a harmful encroachment of built development into an Open Area of Local Significance (OALS) to the detriment of its distinctive local character and appearance. The limited benefits of the development for housing supply do not outweigh the visual harm to the OALS and the development proposes limited economic benefits and will not extend the range of facilities available to the local community. As such there are no special exemptions associated with the development. The proposal is therefore contrary to the provisions of Policies DP1,*

DP2 and DP4 of the Mendip District Local Plan and the guidance contained under Part 15 of the NPPF)". The reason for refusal is also consistent with the previous appeal decision, which must be afforded significant weight.

- 1.24 In regard to refusal reason 2, relating to the lack of an up-to-date ecology report/ assessment, the appellant has now provided a satisfactory update to the previous report, dated February 2020 from Seasons Ecology, which confirms that the site conditions have not changed since the original ecology survey was carried out. As such the LPA can confirm that refusal reason 2 has been overcome.

2.0 CONCLUSIONS:

- 2.1 Within the appeal decision relating to the previous refusal of permission on this site, for the same development (see Appendix 1), the Inspector confirms (under para 13) that the harm to the OALS/ Local Green Space would not be outweighed by the limited benefits of the development:

"As set out above both Appeal A and Appeal B would cause significant harm to the character and appearance of an OALS. As pointed out by the appellants both proposals would contribute to local housing supply and any future occupiers would likely support local services, which are modest benefits. The appeal sites are also both within the development limits of Norton St Philip, a primary village, which is a sustainable location for new development. However, even taken together, these matters do not outweigh the harm I have identified as arising from both appeals".

- 2.2 The LPA would suggest that the same conclusion applies here, which arguably is supported even more so by the weight that can be attached to the NSP Neighbourhood Plan.
- 2.3 In summary, it is considered that the proposal is unacceptable as the visual harm created to the Open Area of Local Significance (OALS) is not outweighed by the limited benefits of granting planning permission for 2 market dwellings, given the special qualities of the OALS and the fact that housing supply for Norton St Philip has already been significantly exceeded. The development does not benefit from any special exemptions and should therefore be determined in accordance with the Development Plan and the presumption in favor of sustainable development.
- 2.4 The development is not supported by the local community of Norton St Philip, including the Parish Council and District Council, who offer their strong support for the continued protection of Ringwell Meadows as an Open Area of Local Significance (OALS) and Local Green Space (LGS).
- 2.5 The Inspector is respectfully requested to dismiss this appeal and maintain consistency with the previous appeal decision.
- 2.6 A separate list of suggested conditions is provided, on a without prejudice basis, should the Inspector be inclined to allow the appeal, within Appendix 2.

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3.0 APPENDIX LIST:

3.1 The LPA has provided the following items/ documents as part of the Appendix to this appeal statement:

Appendix 1: Appeal decisions for 2016/1293/OTS and 2016/1292/FUL

Appendix 2: Recommended Conditions

Appendix 3: Planning Policy Officer comments for 2019-2549-OTS

Appendix 4: Map Showing Local Green Spaces Within NSP

Appendix 5: Designation of Local Green Spaces - Part 2 of Mendip Local Plan (Sites and Policies)

Appendix 6: Site Photographs

Appendix 7: Aerial Photographs of Site

Appendix 8: Case Officer Report for 2019-2549-OTS

Appendix 9: Norton St Philip Neighbourhood Plan

Appendix 10: Approved Judgment from Mrs Justice Lang DBE, May 2020

Appendix 11: Court of Appeal Decision, June 2020

Appendix 12: MDC Local Plan, Part 1

3.2 Please do not hesitate to contact me should you need further information or clarification on any of the points raised above.

Yours faithfully,

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