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# Appeal Decision

Site visit made on 2 December 2021

**by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 09 December 2021**

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**Appeal Ref: APP/R3325/W/21/3279946**

**Land Adjacent Burgum, Westport, Langport, Somerset TA10 0BH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr & Mrs Maria Duarte against the decision of South Somerset District Council.
  - The application Ref 21/00181/S73A, dated 18 January 2021, was refused by notice dated 27 May 2021.
  - The application sought planning permission to vary condition 2 (approved plans) of planning approval 18/02149/FUL and as amended 19/02771/S73 to allow a minor increase in roof height, to ensure buildability and a continuous parapet without complying with a condition attached to planning permission Ref 19/02771/S73, dated 27 January 2020.
  - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: 3641/009, 1211/002A, 1211/031A, 1211/041A, 1211/042A, 1211/043A, 1211/044A, 1211/051A, 1211/052A.*
  - The reason given for the condition is: *For the avoidance of doubt and in the interests of proper planning.*
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## Decision

1. The appeal is allowed and planning permission is granted to vary condition 2 (approved plans) of planning approval 18/02149/FUL and as amended 19/02771/S73 to allow a minor increase in roof height, to ensure buildability and a continuous parapet at Land Adjacent to Burgum, Westport, Langport, Somerset TA10 0BH in accordance with the application Ref: 21/00181/S73A, dated 18 January 2021, without complying with condition number 2 previously imposed on planning permission 19/02771/S73, dated 27 January 2020 and subject to the conditions set out in the attached schedule.

## Background and Main Issue

2. On the 30 October 2018 planning permission<sup>1</sup> was granted, subject to a range of conditions, for the erection of a two bedroom, single storey dwelling with associated parking and landscaping at the appeal site. A further application<sup>2</sup> to allow for internal and external alterations was approved by the Council in January 2020. At the time of my site visit, the development had commenced with the main structure of the dwelling being in place. The appeal seeks a revised, but not substantially different, design to the dwelling previously

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<sup>1</sup> Local Planning Authority Reference: 18/02149/FUL

<sup>2</sup> Local Planning Authority Reference: 19/02771/S73

approved. This appeal seeks the removal of condition 2 and its replacement with a condition specifying the plans that reflect the amended design. The essential difference between the two schemes is the overall height of the building and increase in the scale of the parapet.

3. The main issue is the effect of the development on the character and appearance of the surrounding area and on the host dwelling.

### **Reasons**

4. The appeal site is located within Westport, a settlement which predominately comprises ribbon development adjacent to the B3168 highway. Residential properties appear to be predominately detached and front onto the highway. The appeal site is positioned on the south eastern side of the highway and situated adjacent to a canal and grade II listed bridge.
5. As noted above, planning history for the site indicates that the Council previously approved internal and external alterations at the appeal property following the submission and approval of the original planning application. This appeal seeks to vary condition 2 as identified above, which lists the approved plans, in order to allow for changes in the roof height and which, it is maintained by the Appellants, is to ensure buildability and a continuous parapet.
6. The evidence and plans before me indicate that whilst externally the overall height of the dwelling has not increased from that previously permitted, the parapet has been increased in terms of its height, and which the Council has put it to me would result in a building that appeared top heavy and harmful to the character and appearance of the surrounding area. Whilst the Council's submissions regarding the increase in height of the dwelling are acknowledged, externally the overall height of the building has not been increased. However, the plans indicate that the height of the parapet element of the dwelling has been increased by a small degree.
7. In my view, based on the evidence before me and observations made on my visit, the very small increase in the height of the parapet does not substantially or significantly alter the character or appearance of the appeal building and would not, as a consequence of that increase, result in a dwelling that appeared to be two storey in height, or which competes with the height of the nearby dwellings within Westport. Furthermore, I find that the increase in the height of the parapet element would not substantially alter the position in comparison to that which was approved by the Council and conclude that the changes made have not resulted in a building that appeared top heavy, or which dominates the street scene or other nearby properties.
8. Accordingly, for the above reasons the alterations to the dwelling do not give rise to any harm to the character and appearance of the area or the character and appearance of the host dwelling. It therefore complies with Policy EQ2 of the South Somerset Local Plan (March 2015) and those paragraphs of the National Planning Policy Framework (July 2021), which seek, among other things, to ensure that development will be designed to achieve a high quality, which promotes South Somerset's local distinctiveness and preserves or enhances the character and appearance of the district, reinforces local distinctiveness, respects local context and takes into account local character and site specific considerations.

## **Other Matters**

9. I have carefully read and considered the residents' and Parish Council's concerns with regards to the significance of the amendments, and that development was not carried out in accordance with the originally approved plans. However, an application under Section 73A provides for such minor amendments to be made. In my view, based on the evidence provided, I am satisfied that the scheme has not modified the development in a way that makes it substantially different from that which was previously approved, and for the reasons given above the proposal would not result in any harm to the character and appearance of the surrounding area.
10. Whilst I also note the concerns regarding the use of materials, the evidence before me indicates that these matters were previously approved by the Council and the appeal scheme is comparable in its impact to that which has already been approved. In this regard, I find no harm to the character and appearance of the appeal building or to the surrounding area in terms of the materials to be used. I have further noted the concerns regarding ecology and wildlife. However, the Council has recommended a condition for wildlife mitigation measures, which I shall return to below.
11. Further to the above, the reference to the nearby grade II listed bridge within the Officer's report is acknowledged. I was able to visit the listed bridge on my site visit, and consistent with the findings of the Inspector in a recent appeal<sup>3</sup> that concerned development at the appeal site, I find that, by reason of the limited intervisibility between the bridge and the appeal site, the significance and setting of the heritage asset would be preserved.

## **Conditions**

12. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. The development has commenced, and I have therefore omitted the standard time limit condition as this is no longer necessary. I have only very limited information before me about the status of the other conditions imposed on the earlier planning permission. However, the Council has suggested conditions in the event that the appeal was successful.
13. In addition to the condition that specifies approved drawings to provide certainty, conditions relating to access, visibility splays and parking are necessary and reasonable in the interests of highway safety. Furthermore, and as noted above, in the interests of the protection and conservation of biodiversity, it is necessary to include a condition that requires that the development be carried out in accordance with the previously submitted ecological mitigation and compensation report.

## **Conclusion**

14. For the reasons given above I conclude that the appeal should succeed.

*Mr A Spencer-Peet*

INSPECTOR

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<sup>3</sup> Appeal Reference: APP/R3325/W/17/3171946

## **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 3641/009 and drawing numbers: Proposed Landscape Plan 1211/002A dated 17 September 2019 and drawing numbers: Proposed Plan 1211/031A, Proposed SE Elevation 1211/041B, Proposed NW Elevation 1211/042B, Proposed SE Elevation 1211/043B, Proposed NE Elevation 1211/044B, Proposed Section AA 1211/051D and Proposed Section BB 1211/052B dated 16 September 2019.
- 2) The proposed access shall be constructed in accordance with details shown on the approved plans, and shall be available for use before dwelling hereby permitted is first occupied. Once constructed the access shall be maintained thereafter in that condition at all times.
- 3) There shall be no obstruction to visibility greater than 900 millimetres above adjoining road level in advance of the visibility splays shown on the approved plans. Such visibility shall be fully provided before the dwelling hereby permitted is first occupied and shall thereafter be maintained at all times.
- 4) The area allocated for parking and turning on the approved plan, shall be kept clear of obstruction and shall not be used other than for parking and turning of vehicles in connection with the development hereby permitted.
- 5) The development hereby permitted shall be carried out in accordance with the ecological mitigation and compensation measures detailed in the submitted report 'Further Specific Ecological Mitigation/Compensation', dated 4 January 2018. The development shall be undertaken in accordance with the approved mitigation measures, unless otherwise agreed in writing by the Local Planning Authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions to the dwelling hereby approved and no buildings or other structures including ponds, pools, walls, fences, gates or other means of enclosure are to be built within the curtilage of the dwelling without the prior express grant of planning permission.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the flat roof elements of the dwelling hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the prior express grant of planning permission.
- 8) The entrance gate(s) shall be set back a minimum distance of five metres from the edge of the adjoining carriageway and the sides of the access shall

be splayed from the centre of the access at such distance from the carriageway edge at an angle of 45 degrees. These works shall be fully implemented before the access concerned is first brought into use.