

SECTION 2 – ITEM 6

Application No: 21/P/3185/FUL

Proposal: Erection of additional building at Busy Buddies Nursery to increase the capacity of existing nursery

Site address: Busy Buddies Nursery, Puxton Park, Cowslip Lane, Hewish, Banwell

Applicant: Puxton Ltd

Target date: 07.02.2022

Extended date: 20.01.2023

Case officer: Simon Exley

Parish/Ward: Banwell and Winscombe

Ward Councillors: Councillor Karin Haverson, Councillor Ann Harley

REFERRED BY COUNCILLOR HARLEY

Background

The application was deferred by the Committee at its December meeting.

Summary of recommendation

It is recommended that the application be **REFUSED**. The full recommendation is set out at the end of this report.

The Site

The application site is a field located to the south-west of the existing Busy Buddies nursery, which is located on the edge of the Puxton Park complex. A significant hedgerow with hedgerow trees and ditches along Bulls Barn Lane, a narrow, unadopted lane to the north separates the site from the rest of the Puxton Park complex. The only built form associated with Puxton Park south of Bulls Barn Lane is the existing nursery, in a converted agricultural building. The existing nursery is served by car parking on the northern side of Bulls Barn Lane, with pedestrian access to the nursery.

The Application

Full permission is sought for an additional building of 550 square metres (the existing nursery has a floorspace of approximately 155 square metres). The new building would be physically separate from the existing nursery and also served by a pedestrian access from the existing car park on the northern side of Bulls Barn Lane.

Relevant Planning History

Year: 2020

Reference: 20/P/0701/FUL

Proposal: Erection of 4no. buildings: 1no. building to be for Use Class B8 (Storage and Distribution) and 3no. buildings to be for indoor sport, recreation or fitness uses together with access roads, paths and parking for 36 cars, including 5 parking spaces for the adjoining children's day nursery (part retrospective).

Decision: Approved

Year: 2018

Reference: 18/P/3778/CSA

Proposal: Prior approval for the change of use from 1no. agricultural building and land to children's day nursery

Decision: Approved

Year: 2017

Reference: 16/P/2634/F

Proposal: Change of use of first floor offices to children's day nursery

Decision: Refused – Appeal dismissed

Policy Framework

The site is affected by the following constraints:

- Outside settlement boundaries
- Flood zone 3a
- Bat protection area

The Development Plan

North Somerset Core Strategy (NSCS) (adopted January 2017)

The following policies are particularly relevant to this proposal:

CS1	Addressing climate change and carbon reduction
CS2	Delivering sustainable design and construction
CS3	Environmental impacts and flood risk management
CS4	Nature Conservation
CS5	Landscape and the historic environment
CS10	Transport and movement
CS11	Parking
CS12	Achieving high quality design and place making
CS20	Supporting a successful economy
CS25	Children, young people and higher education
CS27	Sport, recreation and community facilities
CS33	Smaller settlements and countryside

West of England Joint Waste Core Strategy (adopted 25 March 2011)

None of the saved policies are particularly relevant to this proposal.

Sites and Policies Plan Part 1: Development Management Policies (adopted 19 July 2016)

The following policies are particularly relevant to this proposal:

DM1	Flooding and drainage
DM2	Renewable and low carbon energy
DM8	Nature Conservation
DM10	Landscape
DM24	Safety, traffic and provision of infrastructure etc associated with development
DM28	Parking standards
DM32	High quality design and place making
DM53	Employment development on greenfield sites in the countryside
DM55	Extensions, ancillary buildings or the intensification of use for existing businesses located in the countryside
DM69	Location of sporting, cultural and community facilities

Sites and Policies Plan Part 2: Site Allocations Plan (adopted 10 April 2018)

The following policies are particularly relevant to this proposal:

SA2	Settlement boundaries and extension of residential curtilages
SA8	Allocated/safeguarded community uses

Other material policy guidance

National Planning Policy Framework (NPPF) (2021)

The following sections are particularly relevant to this proposal:

- 2 Achieving Sustainable Development
- 6 Building a strong, competitive economy
- 12 Achieving well designed places
- 14 Meeting the challenge of climate change, flooding and coastal change
- 15 Conserving and enhancing the natural environment

Supplementary Planning Documents (SPD) and Development Plan Documents (DPD)

- North Somerset Parking Standards SPD (adopted November 2021)
- North Somerset Landscape Character Assessment SPD (adopted September 2018)
- Biodiversity and Trees SPD (adopted December 2005)
- North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: SPD (Adopted January 2018)

Consultations

Copies of representations received can be viewed on the council's website. This report contains summaries only.

Third Parties:

50 letters of support have been received. The principal planning points made are as follows:

- Additional space for children
- Additional employment would be created
- Insufficient nursery places available locally
- Open air experience at this nursery very welcome
- Will benefit the local community

Banwell Parish Council: “Support the application”.

Other Comments Received:

Environment Agency

No objection, subject to the inclusion of conditions, provided that the Local Planning Authority is satisfied the requirements of the Sequential Test under the National Planning Policy Framework are met.

North Somerset Internal Drainage Board

Reiterates standing advice and raises no objection – requests the inclusion of an advice note.

Principal Planning Issues

The principal planning issues in this case are (1) the principle of the development, including whether it amounts to sustainable development, (2) the effect on the character and appearance of the area and (3) flooding.

Issue 1: The Principle of the Development

Application 16/P/2634/F, for a nursery at Puxton Park, was refused and dismissed at appeal. The Inspector concluded that Puxton Park was outside the settlement boundary, in a location that was not genuinely accessible by a choice of transport modes, and not well related to the community it was intended to serve.

Subsequent to that appeal decision, the applicants took advantage of permitted development rights to change of use of an existing agricultural building into a children’s day nursery of approximately 155 square metres (18/P/3778/CSA). This nursery is now open as “Busy Buddies” and sits south of Bulls Barn Lane, separated by that lane from the rest of the facilities at Puxton Park. The new nursery building would be served from the existing car park north of Bulls Barn Lane, in the same way as the existing nursery.

The current application is to erect a new, free standing nursery building to allow Busy Buddies to expand. The proposal is for a building of some 550 square metres (over 3 times larger than the existing nursery) and set in a green field approximately 20 metres away from the existing nursery. The applicants and those supporting the application argue that there is a demand for the expansion and that the existing nursery is very popular.

However, as noted by the Inspector in the 2017 appeal, the application site is not well served by public transport and is likely to be largely served by journeys in private cars, some of which may be from a considerable distance. This is not to say that no local children attend the existing nursery, because some do, but the very nature of a nursery is that many children are dropped off on the way to a parent's work. Given the location of this nursery, and its good connections by road to population centres, these car-borne journeys would often be from some distance away. This can be illustrated by the fact that amongst the supporters of the application, two were from Wick St Lawrence, two were from St Georges, three were from Banwell, eight were from Worle, 31 were from Weston-super-Mare and one from Backwell. Two were from outside the district completely.

Policy DM69 of the Sites and Policies Plan (Part 1) deals with the location of sporting, cultural and community facilities, and says that these will be permitted within settlement boundaries, provided that a number of criteria are met. One is that "*the site is well related to the community it is intended to serve*", whilst another is "*the site is in a sustainable location, genuinely accessible by a choice of transport modes and to disabled people*". It goes on to say that "*facilities will only be permitted outside settlement boundaries where it is demonstrated that the scale, character or potential impact of the facility would be appropriate taking into account the above principles.*"

This application site is not within (or close to) a settlement boundary, and, as the Inspector noted in the 2017 appeal decision, is not well related to the community it is designed to serve, and not genuinely accessible by a choice of transport modes. The fact that a much smaller nursery already exists on site is not a good reason to allow a much larger nursery building to be constructed when it would amount to unsustainable development. The proposal is therefore contrary to policy DM69.

Policy DM53 deals with employment development in the countryside. However, its text makes clear that this policy deals with, "*development proposals for new buildings for business use (B1, B2 or B8 use)*". This proposal for a nursery does not fall within any of these use classes, and the policy is therefore not relevant to this proposal. Even it were considered relevant, the policy says that, to be acceptable, the proposal must relate to "*processing locally grown produce or other land based rural business*", which this use plainly does not.

Policy DM55 of the Sites and Policies Plan (Part 1) deals with extensions, ancillary buildings or the intensification of use for existing businesses located in the countryside. This policy says that "*replacement buildings, extensions to buildings, ancillary buildings or the intensification of use for existing businesses, located in the countryside will be permitted*", provided that a number of criteria are met. One is that "*the scale of the proposal is not harmful to the character and appearance of the countryside*". This issue is considered later in this report. Policy DM55 also says that "*the re-use of existing buildings is given priority over new development; only where no suitable buildings are available will new development be acceptable*", and that "*proposals to extend outside the curtilage into surrounding countryside will need to be fully justified and not be harmful to the character and appearance of the countryside*". This policy could be argued to give some support to the proposal. However, the proposal does extend outside the existing curtilage of the nursery into the surrounding countryside, and insufficient justification exists for such a large addition (550 square metres) to a relatively small existing business (155 square metres).

Policy CS33 of the Core Strategy is also relevant to this application. This says that development outside settlements will be strictly controlled in order to protect the character of the rural area and prevent unsustainable development. In relation to community facilities, it says that, where the need for these cannot be met within or adjacent to settlement boundaries, consideration will be given to sites outside, where they are well related to the community which they are intended to serve. Given the conclusions above, the proposal is also clearly contrary to policy CS33.

Policy CS25 of the Core Strategy is also relevant. It says that new schools, children and young people facilities will be sited in a location that would facilitate safe routes to the venue and be directly accessible to a pedestrian and cycle way network. The proposal would not be directly accessible to a pedestrian and cycleway network, contrary to policy CS25. This conclusion was also reached by the Inspector in the appeal in 2017.

On this issue, it is considered that the proposal is therefore contrary to a number of important policies (Policy DM69 of the Sites and Policies Plan (Part 1) and Policies CS33 and CS25 of the Core Strategy). Policy DM55 of the Sites and Policies Plan (Part 1) could be considered relevant, but provides little support for the proposal, given its scale compared to the existing business.

It is concluded that the proposal is unacceptable in principle and amounts to unsustainable development.

Issue 2: Character and Appearance

The proposal involves the erection of a large new building on a green field site and would spread the built form of Puxton Park further into open countryside. The application site is currently separated from the main Puxton Park complex by Bulls Barn Lane and its hedgerows. This proposal would not respect the historic field patterns on site and would appear as an intrusion into open countryside and would adversely harm the rural character of the area.

The proposed building would be located to the south of the existing development which comprises Puxton Park. The surrounding area is characterised by an open, remote pastoral character with dispersed development comprising of agricultural and other rural buildings. The proposed site falls within the *A1 Kingston Seymour and Puxton Moors* Landscape Character Area. The council's Landscape Character Assessment SPD (LCA SPD) identifies the area as being flat, open lowland which has a strong sense of ruralness and remoteness. Page 33 of the LCA SPD advises that planning applications within the type A moors, should seek to minimise the encroachment of visually intrusive land uses and should preserve the remoteness and openness. The proposed development would result in a significantly larger building being erected on an undeveloped field and so would be contrary to the guidance contained in the LCA SPD.

The proposed building would be significantly larger than the existing building onsite. The existing building has a floor area of 155sq metres. Furthermore, the existing nursery was a re-use of a rural building and so its appearance is representative of the rural character. In comparison, the proposed building would have a floor area of 550 sq metres. The proposed building would be sited further south than the existing building, away from the main site. The proposed, size, bulk and scale, together with the associated paraphernalia

would result in encroachment into the open countryside to the detriment of the rural landscape.

The proposed building would be out of keeping with the pattern of the surrounding rural development and would conflict with landscape character by encroachment into the open countryside. The proposal would therefore be contrary to policy DM32 and DM10 of the Sites and Policies Plan (Part 1) and contrary to the North Somerset Landscape Character Assessment SPD (adopted September 2018).

Issue 3: Flooding

The site is within an area of flood risk – within flood zone 3a. Policy CS3 of the Core Strategy says that *“Development in zones 2 and 3 of the Environment Agency Flood Map will only be permitted where it is demonstrated that it complies with the sequential test set out in the National Planning Policy Framework and associated technical guidance and, where applicable, the Exception Test”*, unless it is within one of two categories that are not applicable to this proposal.

The applicants point out that the purpose of the sequential test is to examine if there are reasonably available sites in an area that is appropriate for the proposed development.

National Planning Policy Guidance gives advice on the subject and says that *“For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. For some developments this may be clear, for example, the catchment area for a school. In other cases, it may be identified from other Plan policies. For example, where there are large areas in Flood Zones 2 and 3 (medium to high probability of flooding) and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives. Equally, a pragmatic approach needs to be taken where proposals involve comparatively small extensions to existing premises (relative to their existing size), where it may be impractical to accommodate the additional space in an alternative location.”*

There is no overriding need for a nursery to be provided in the flood zone, and the proposal is not for a *“comparatively small extension”* to existing premises; the new building would be over three times as large as the existing building.

The submitted document dealing with Flood Risk Assessment concludes that *“The site requires the host building to carry out functions within the nursery so locating the building away from this location is considered wholly impractical. As all the immediate land surrounding the site is within Flood Zone 3 the proposed location is considered Sequentially preferable.”* As a result, the submitted sequential test does not consider any alternative sites or carry out an exceptions test.

The need for robust sequential testing has been supported on appeal. For example, in a recent appeal case in respect of The Elms Farm, East Hewish Lane, Hewish (ref no. 21/P/2949/FUL) the lack of evidence required to demonstrate that the sequential test has been passed was a key issue contributing to the case being dismissed in November 2022 as conflicting with Core Strategy Policy CS3, the Council's Flood Risk Advice Note (2019), and national policy and guidance. Another even more recent appeal for a site in Wick St Lawrence (ref 21/P/3522/FUL) was also dismissed on 22nd December. The inadequacy of

the sequential test was a key factor in that decision despite the proposal being for two new dwellings in place of an existing building which already had approval to be converted to two dwellings. In that instance, the Inspector concluded that
“...given that the appeal site is located within Flood Zone 3a, where there is a high probability of flooding, I consider it imperative that flood risk is thoroughly and robustly assessed, in order to properly minimise associated risk. In turn, I attach significant weight to the policy conflicts in this regard. Unfortunately, the benefits of the scheme would not be sufficient to outweigh the potential harm in this regard.”

In this current application for a nursery also in flood zone 3a, it considered that the requirements in relation to a sequential test have not been met, and that the application should be refused on those grounds. In addition, it should be noted that an exceptions test assessment has not been carried out.

Issue 4: Setting of Listed Building

The proposal does not affect the setting of any listed buildings.

RECOMMENDATION: REFUSE for the following reasons:

1. The proposed children’s day nursery would not be well related to the community it is intended to serve and is not genuinely accessible by a choice of modes of transport other than the private car. It does not amount to sustainable development and is contrary to policies CS33 and CS25 of the North Somerset Core Strategy, and policy DM69 of the North Somerset Sites and Policies Plan (Part 1).
2. The proposed new building would unacceptably intrude into open countryside, adversely impacting upon the character of the area and would not respect the historic field patterns in the area, contrary to policy DM10 of the North Somerset Sites and Policies Plan (Part 1) and section 6 of the North Somerset Landscape Character Assessment SPD (adopted September 2018).
3. The site is located within Flood Zone 3 (a High risk zone), and the submitted sequential test assessment does not consider alternative sites at a lower risk, nor has an exceptions test assessment been carried out. It has therefore not been adequately demonstrated that the proposal would not result in an unacceptable additional risk of flooding. The proposal is not considered to have passed the sequential and exceptions tests contrary to policy CS3 of the North Somerset Core Strategy, paragraphs 159, 162 and 163 of the National Planning Policy Framework and policy DM1 of the North Somerset Sites and Policies Plan (Part 1).