

SECTION 2 – ITEM 7

Application No: 23/P/1866/PIP

Proposal: Permission in Principle for the erection of 1no. self-build dwelling

Site address: Land adjacent to The Grange, Smallway, Congresbury

Applicant: Mr Martin Richards

Target date: 03.10.2023

Extended date: 31.10.2023

Case officer: Anna Hayes

Parish/Ward: Congresbury/Congresbury and Puxton

Ward Councillors: Councillor Dan Thomas

REFERRED BY COUNCILLOR THOMAS

Summary of recommendation

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

The planning application can be viewed at [23/P/1866/PIP](#).

Background

Consideration of this application was deferred at the November meeting at the applicant's request.

Procedure

This application is for "permission in principle" (PIP) which follows a different procedure to full or outline planning applications.

The PIP route is an alternative way of seeking planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The PIP consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This application is the first permission in principle stage for the erection of 1no. self-build dwelling.

The national Planning Practice Guidance (PPG) explains how such applications should be handled. A decision on whether to grant permission in principle following a valid application must be made in accordance with relevant policies in the development plan unless there are material considerations which indicate otherwise.

The guidance makes clear that the scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage.

It is not possible for conditions to be attached to a grant of permission in principle and its terms may only include the site location, the type of development and amount of development. Local planning authorities can however inform applicants what they will need to submit at the technical details consent stage.

Planning obligations cannot be secured at the permission in principle stage. Local planning authorities can however inform applicants that planning obligations may be needed at the technical details consent stage.

The relevant rules for PIP applications states that a local planning authority may not grant permission in principle for "habitats development" or for development that requires formal environmental assessment under the EIA Regulations. This application does not fall within these definitions and therefore the PIP procedure can be applied.

The Site

The application site is on the west side of Smallway and comprises a parcel of agricultural land that appears to have previously used as an orchard. The site is located between a commercial dog kennel business and a residential dwelling. A garden centre car park is opposite the site and open countryside to the east.

The Application

The application is the first stage of a permission in principle application for the erection of 1no. self-build dwelling.

Relevant Planning History

Year: 2023
Reference: 23/P/1121/PIP
Proposal: Permission in Principle for the erection of 1no. self-build dwelling.
Decision: Refused

Year: 2021
Reference: 21/P/2087/FUL
Proposal: Erection of 3 no. open market linked dwelling houses and 1 no. self-build detached dwelling house
Decision: Refused

Year: 2020
Reference: 20/P/0822/FUL

Proposal: Erection of 3no. linked houses and 1no. detached house.

Decision: Refused

Year: 2015

Reference: 15/P/1166/F

Proposal: Erection of a terrace of 3no. cottages on land adjacent to The Grange

Decision: Approved with conditions

Year: 2009

Reference: 09/P/0252/O

Proposal: Outline application for the erection of 5no. dwellings with all matters reserved for subsequent approval

Decision: Refused

Year: 1997

Reference: 97/0204

Proposal: Detached dwelling and double garage

Decision: Refused

Policy Framework

The site is affected by the following constraints:

- Outside settlement boundary
- NS and Mendip Bats SAC Greater Horseshoe Bat Zone A
- Within strategic gap

The Development Plan

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

The following policies are particularly relevant to this proposal:

Policy Ref Policy heading

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
CS13	Scale of new housing
CS14	Distribution of new housing
CS19	Strategic gaps
CS33	Smaller settlements and countryside

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

The following policies are particularly relevant to this proposal:

Policy	Policy heading
DM2	Renewable and low carbon energy
DM8	Nature Conservation
DM9	Trees
DM10	Landscape
DM24	Safety, traffic and provision of infrastructure etc associated with development
DM28	Parking standards
DM32	High quality design and place making
DM42	Accessible and adaptable housing and housing space standards
DM71	Development contributions, Community Infrastructure Levy and viability

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

The following policies are particularly relevant to this proposal:

Policy	Policy heading
SA2	Settlement boundaries and extension of residential curtilages
SA7	Strategic Gaps

The Congresbury Neighbourhood Plan

The Congresbury Neighbourhood Plan was made at Council on 12 November 2019 following the successful referendum result on 19 September 2019.

The following policies are particularly relevant to this proposal:

Policy Ref	Policy heading
Policy H1	Sustainable Development Location Principles
Policy H2	Sustainable Development Site Principles
Policy H3	Housing Allocations

Other material policy guidance

National Planning Policy Framework (NPPF)(2023)

The following is particularly relevant to this proposal:

Section No	Section heading
2	Achieving Sustainable Development
4	Decision-making
5	Delivering a sufficient supply of homes
8	Promoting healthy and safe communities
9	Promoting sustainable transport
11	Making effective use of land
12	Achieving well designed places

- 14 Meeting the challenge of climate change, flooding and coastal change
15 Conserving and enhancing the natural environment

National Planning Practice Guidance

Permission in Principle Guidance – Paragraphs 58-001-20180615 to 58-048-20180615
Habitats Development Guidance - Paragraph 58-005-20190315

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

- Residential Design Guide (RDG1) Section 1: Protecting living conditions of neighbours SPD (adopted January 2013)
- Residential Design Guide (RDG2) Section 2: Appearance and character of house extensions and alterations (adopted April 2014)
- North Somerset Parking Standards SPD (adopted November 2013)
- North Somerset Landscape Character Assessment SPD (adopted September 2018)
- Biodiversity and Trees SPD (adopted December 2005)
- Creating sustainable buildings and places SPD (adopted April 2021)
- North Somerset and Mendip Bats Special Area of Conservation (SAC) Guidance on Development: SPD (Adopted January 2018)
- Accessible Housing Needs Assessment SPD (Adopted April 2018)

Consultations

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

Third Parties: 1 letter of objection has been received. The principal planning point made is that it is an unsuitable location adjacent to dog kennel business and may impact on that business.

27 letters of support have been received from friends and family members. The principal planning points made are as follows:

- Will provide suitable accommodation to meet the family’s needs
- Family needs a bigger home as current home inadequate
- Applicant has family who live in Congresbury

Congresbury Parish Council: “It is outside the current settlement boundary and constitutes an incremental erosion of the strategic gap between the settlements of Congresbury and Yatton”

North Somerset Levels IDB

Providing the development does not affect any land within 6 m of the top of an existing watercourse, the Internal Drainage Board will not have an in principal objection to the position of the development in relation to the watercourses.

Principal Planning Issues

The principal planning issues in this case are 1) principle of development, 2) location of the development – impact from noise, highway safety, noise, 3) character of the area and effect of strategic gap, 4.) provision of special needs housing, and 5) self build.

Issue 1: Principle of development in relation to the development plan

The application site is located outside of the Settlement Boundary and within the strategic gap between Yatton and Congresbury. Policy CS13 of the Core Strategy requires sufficient developable land to deliver a minimum number of dwellings during the plan on land identified for housing. The application site is not allocated for development.

The relevant settlement policy for this proposal is CS33: Infill villages, smaller settlements and countryside. This policy states that development will be strictly controlled in order to protect the character of the rural area and prevent unsustainable development. New residential development will be restricted to replacement dwellings, residential subdivision, residential conversion of buildings where alternative economic use is inappropriate, or dwellings for essential rural workers.

The proposed development does not fall within any of the exception categories set out in policy CS33. As such, the application site by virtue of its location in the countryside, would be contrary to Policies CS14 and CS33 of the Core Strategy as well as Policy SA2 of the Sites and Policies Plan Part 2 and is therefore unacceptable in principle. This is supported by a previous appeal at this site for the against the refusal of four dwellings (re 21/P/2087/FUL) where the Inspector found that '*.... the proposal is inconsistent with the spatial strategy established within the development plan and would erode the countryside in spatial terms. It would therefore conflict with Policies CS14 and CS33 of the CS, which among other things seek to control inappropriate development in the countryside*'.

A previous planning permission granted on this site (ref 15/P/1166/F for 3no. dwellings) was determined prior to the adoption of the current development plan (the Development Management Plan 2016, Core Strategy Site Allocation Plan 2018 and Congresbury Neighbourhood Development Plan 2019. At the time, the site was not designated as a Strategic Gap. The permission has since expired. A further three applications have been submitted since 2015 which have all been refused.

The weight given to the development plan is affected by the council's lack of a 5 year housing land supply. This means by virtue of NPPF paragraph 11 the "tilted balance" is engaged whereby any adverse impacts of the development must significantly and demonstrably outweigh the benefits. This is addressed in the planning balance exercise at the conclusion of this report.

Issue 2: Location of the development – Impact from noise

An existing dog kennel business adjoins the site to the north. The kennels accommodate up to 10 dogs but have a license for 13 dogs. The barking from the dogs is a source of noise. A planning application to extend the business through the erection of 6no. dog kennels, erection of new log cabin with kitchen and isolations kennel to replace existing facility was recently approved.

The applicant is relying on a previously submitted noise assessment to demonstrate that the development is satisfactory on noise grounds. However, this noise assessment was carried out in April 2021 during the period of Covid and was based on a different site layout. Circumstances have changed since the pandemic in April 2021 with the kennel business getting busier again. Consequently it cannot be demonstrated without an updated noise assessment that the residents of the new dwelling would enjoy reasonable living conditions and would not be adversely affected by noise from the use of the adjoining kennels.

It is also appropriate to consider the impact that a residential use might have on the kennels. In this respect the NPPF (paragraph 187) makes it clear that *“Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide suitable mitigation before the development has been completed”*.

As a noise assessment has not been submitted with the application, it has not been demonstrated how or if the adverse impacts of noise will be mitigated and minimised or how a significant adverse noise impact will be avoided for future occupiers. In the absence of details to the contrary it is considered that the proposal is contrary to policy CS3 of the Core Strategy and paragraphs 185 – 188 of the NPPF as the site is not suitable for residential accommodation due to the noise from adjoining dog kennel business.

Issue 2.1 Location of the development – Flood risk

The edge of the northern part of the site is located within Flood Zone 2 with the remainder of the site currently in flood zone 1. However, the whole of the site is located within future strategic flood risk zone 3a, as climate change is expected to increase flood risk and therefore the site may not be sustainable in the long term.

Government policy set out in the NPPF and related guidance, requires that a Flood Risk Assessment and the Sequential Test and Exception Test are passed before planning is granted for a new dwelling. The aim of a ‘sequential test’ is to steer new development to areas with the lowest risk of flooding. The applicant is required to submit evidence that demonstrates there are no reasonably available sites within an area of lower flood risk which can accommodate the proposal. Once the Sequential Test has been passed, the applicant is required to pass the exceptions test which requires that it is demonstrated that the development would provide wider sustainability benefits for the community which outweigh the community and that the development will be safe for its lifetime without increasing flood risk else. The applicant has not submitted a Flood Risk Assessment or a sequential or exceptions test. The agent has advised that the reason for choosing this site is simply that it is owned by the applicant. ‘

The applicant has not provided any evidence to demonstrate that the dwelling could not be accommodated in an area of lower risk of flooding. Furthermore, given the future flood risk of the site and that the indicative plans propose a bungalow it is unknown whether the applicant would be able to provide a safe refuge area. As such it is considered that future occupiers could be at an avoidable and unacceptable risk of flooding.

The proposed development is, therefore, considered to be at an unacceptable and avoidable risk of flooding and may increase flood risk elsewhere, contrary to policy CS3 of the North Somerset Core Strategy, policy DM1 of the North Somerset Sites and Policies Plan (Part 1) and paragraphs 159-167 of the National Planning Policy Framework (and the associated Planning Practice Guidance).

Issue 2.2: Location of the development – highway safety

Planning permission was previously refused (ref: 21/P/2087/FUL) as it had not been demonstrated that a safe level of visibility could be provided at the site, therefore the Inspector concluded that the proposal would have an unacceptable impact on highway safety.

The site is located to the west side of Smallway, a B Class highway subject to a 40mph speed limit, and is located opposite the entrance to the Cadbury Garden Centre. Like the previous applications on the site, the existing access is proposed to serve the dwelling and this would result in an intensification of the use of the access. The Highway Authority require that suitable visibility splays be provided to demonstrate that a safe level of visibility can be achieved. In a southerly direction, the proposal would fail to satisfy the 120m visibility splay requirements under the Design Manual for Roads and Bridges. The land to the north of the site is outside of the applicant's ownership. As neither the 95m nor the 120m visibility splay would be achievable in practice because the land it crosses is outside of the applicant's control and not within the highway, the proposed 120m visibility splay in both directions would be deficient and vehicles leaving the site would represent a clear hazard.

The Highway Authority has advised that if speed surveys are submitted outside of the site demonstrating 85th percentile speeds of less than 60kmh (37 mph), revised Safe Stopping Distances can be calculated using the formula set out in Manual for Streets (MfS). A reduced level of visibility may then be considered acceptable subject to the submission of appropriate, unobstructed visibility splays conducted in line with the standards set out in MfS.

In view of the above, it is considered that the proposal would have an unacceptable effect on highway safety and conflict with Policy DM24 of the Development Management Policies Sites and Policies Plan (Part 1). Among other things, the policy sets out that development will be permitted provided it would not prejudice highway safety.

Issue 3: Character of the area and effect of strategic gap

Policy CS12 of the Core Strategy and policy DM32 of the North Somerset Sites and Policies Plan (Part 1) require a high standard of design in all new developments. These policies require that development is sensitively designed to respect the character of the site and its surroundings.

The application site is located within the strategic gap between Yatton and Congresbury as set out within the adopted Site Allocations Plan. Policy CS19 of the Core Strategy states strategic gaps between particular settlements or distinct parts of settlements play an important role in maintaining local character and distinctiveness.

This is echoed by policy SA7 of the Site Allocations Plan which states that Development within strategic gaps as shown on the Policies map will only be permitted where:

- the open or undeveloped character of the gap would not be significantly adversely affected;
- the separate identity and character of the settlements would not be harmed; and
- the landscape setting of the settlements would not be harmed.

The application site is open land in this part of Smallway which affords a view of countryside within the strategic gap from Smallway, including the site itself, (a grass field) and trees and fields beyond. The view of countryside across the site aids the sense of separation safeguarded by the strategic gap reinforcing its role in preserving the separate identity of the settlements. Whilst this site comprises a relatively small component of the strategic gap between Congresbury and Yatton, the proposal would nevertheless introduce residential built form and related development onto agricultural land which would constitute an incremental erosion of the strategic gap.

This is supported by the previous dismissed appeal at this site referred to above where the Inspector concluded that, *'It is clear that the land is locally important and retaining its open and undeveloped character protects from ribbon development. Consequently, the proposal would harm the landscape setting of Congresbury, and Policy SA7 of the SAP does not require such harm to be significant in order for conflict to arise'*. Although the appeal decision related to 4 dwellings in total, the proposal would still result in a loss of this undeveloped character and add to the coalescence of the two settlements.

Issue 4: Provision of special needs housing

The proposed development is for the erection of a single dwelling. The indicative floor plans shows that the single-storey dwelling would be fully wheelchair accessible. The intended end-users are the applicant's adult children and the property is proposed as a self-build dwelling.

Any planning permission would run with the land. The personal circumstances of an applicant are therefore not normally sufficient reason to grant planning permission. As the decision has potential to affect people with a protected characteristic, under the Equality Act 2010 and the Public Sector Equality Duty (PSED) the Local Planning Authority must have due regard to the equality principles set out therein. In this respect, no evidence has been provided to demonstrate why the needs of the applicant's family can only be fulfilled through the proposed new dwelling and what other options to provide suitable accommodation have been considered. The negative impact on future occupiers due to noise nuisance, flood risk and safe access should also be taken into account.

Issue 5: Self Build

The proposal is for a self-build property. The Government set targets for self-build dwellings. There are a total of 196 entries on our self-build register at the end of the last period. Although the number of self-build proposals falls short of the Government targets, the council have permissioned a total of 153 plots by that date and continue to permit suitable sites in sustainable locations that comply with the development plan policies.

Planning Balance and Conclusion

At present the Council cannot demonstrate a five-year supply of deliverable housing sites as required by the National Planning Policy Framework (NPPF), with the current supply position standing at 3.5 years.

This means that for applications involving the provision of housing, the policies which are most important for determining the application are deemed to be out of date (NPPF paragraph 11, footnote 8).

In accordance with paragraph 11 of the NPPF this means that unless:

- i: the application of policies in the NPPF that protect areas or assets of particular importance (as listed in NPPF footnote 7) provide a clear reason for refusing the application; or
- ii. the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits

the application should be considered favourably.

In this case, the location of the dwelling within the open countryside would be contrary to policy CS33 of the Core Strategy. In addition, the proposal would cause incremental erosion of the strategic gap between Congresbury and Yatton which would significantly and adversely affect the open, undeveloped character of the part of the strategic gap affected. This harm is given substantial weight.

Furthermore, the site is considered to be at an unacceptable and avoidable risk of flooding and may increase flood risk elsewhere, the site is not suitable for residential accommodation due to the noise from adjoining dog kennel business and the proposal would have an unacceptable impact on highway safety. These matters should also be given significant weight.

In applying the 'tilted balance', the proposal is for a single dwelling to meet the particular needs of the applicant. This has been taken into account in accordance with the PSED. Planning permission runs with the land and therefore the personal circumstances of the applicant has been given very limited weight. The contribution of the proposal to the housing land supply and mix of available housing types in the area would very small and is therefore given limited weight. The economic investment into the local area through the use of local facilities and job creation during construction of the proposed dwelling would only be a short-term, limited benefit to the economy given the minor scale of development and therefore carries little weight. Overall, therefore the significant harm caused to the strategic gap by approving the proposed development outweighs the limited benefits and therefore carries more weight when determining the application.

Other Matters

The above deals with matters of policy principles regarding the proposed location, land use and amount of development. A number of other matters have been raised by the consultees that could impact on the suitability of this site for residential development. This would require further information at the Technical Details Consent stage.

Any future application would be required to show the retention of existing tree and hedgerows of amenity value in order to ensure that the amenity value and biodiversity is not harmed as a result of this application.

The site falls within horseshoe bat consultation zone A. An ecological survey has been submitted with this application and contains suitable recommendations.

The Council's Community Infrastructure Levy (CIL) Charging Schedule took effect on 18 January 2018. This means that the development may be liable to pay the CIL. The Charging Schedule and supporting information can be viewed on the website at www.n-somerset.gov.uk/cil.

Natural Environment and Rural Communities (NERC) Act 2006

The proposed development will not have a material detrimental impact upon bio-diversity.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017

The proposed development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. A formal EIA screening opinion is not, therefore, required.

The Crime and Disorder Act 1998

The proposed development will not have a material detrimental impact upon crime and disorder.

Equalities assessment

The Equalities Act 2010 sets out the Public Sector Equalities Duty ("PSED"). Case law has established that this duty is engaged when planning applications are determined and consequently this duty has been applied in the determination of this application. Due regard has been paid to the need to eliminate discrimination and promote equality with regard to those with protected characteristics.

RECOMMENDATION: REFUSE for the following reasons:

1. The proposed development would result in additional housing on land located outside the settlement boundaries of Congresbury and Yatton in the open countryside in a location where it would have an adverse effect on landscape character and where it cannot be considered to be sustainable. The development would therefore conflict with policies CS14 and CS33 of the North Somerset Core Strategy.
2. The development proposal would constitute an incremental erosion of the strategic gap between the settlements of Congresbury and Yatton and affect the sense of openness in the area affected and would therefore conflict with policies CS19 of the Core Strategy and SA7 of the Site and Policies Plan Part 2 (Site Allocations).

3. The application site is in an area at risk from flooding and the application does not demonstrate that the proposal passes the Sequential and Exception Tests set out in policy CS3 of the North Somerset Core Strategy and section 14 of the National Planning Policy Framework. The Local Planning Authority is not, therefore, satisfied that there are no alternative sites in the area that are reasonably available for development and have a lower probability of flooding, or that the proposal would provide wider sustainability benefits to the community that outweigh the flood risk, or that the flood risks resulting from the development can be safely managed. The proposed development is, therefore, considered to be at an unacceptable and avoidable risk of flooding and may increase flood risk elsewhere, contrary to policy CS3 of the North Somerset Core Strategy, policy DM1 of the North Somerset Sites and Policies Plan (Part 1) and paragraphs 159-167 of the National Planning Policy Framework (and the associated Planning Practice Guidance).
4. Insufficient information has been provided to demonstrate how or if the adverse impacts of noise from the existing and proposed dog kennels on adjoining site will be mitigated and minimised or how a significant adverse noise impact will be avoided for future occupiers. In the absence of details to the contrary it is considered that the proposal is contrary to policy CS3 of the Core Strategy and Section 15 of the NPPF as the site is not suitable for residential accommodation due to the noise from adjoining dog kennel business.
5. In the absence of information to demonstrate the contrary, the submitted plans do not demonstrate that adequate visibility can be obtained at the access point to Smallway which would have an adverse impact on highway safety. The development therefore conflicts with policy DM24 of the Sites and Policies Plan Part 1 and Section 12 of the NPPF.