

SECTION 2 – ITEM 6

Application No: 23/P/1279/FUL

Proposal: Proposed demolition of existing Chicken Barn and subsequent erection of 2 no. dwellings with landscaping and hard standing alterations.

Site address: Chicken Barn, Cedar Farm, Wick Road, Wick St Lawrence.

Applicant: The Mead Group

Target date: 22.08.2023

Extended date: 09.02.2024

Case officer: Anna Hayes

Parish/Ward: Wick St Lawrence Wick St Lawrence And St Georges

Ward Councillors: Councillor Stuart Davies

REFERRED BY COUNCILLOR STUART DAVIES

Summary of recommendation

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

Background

Planning permission was previously refused and dismissed at appeal for an identical application for the demolition of the existing agricultural building and the erection of 2no. dwellings and associated carports (Planning Application no: 21/P/3522/FUL). The appeal was dismissed on flood risk grounds as the appellant had failed to demonstrate that the sequential test had been properly carried out and passed.

The Site

The application site comprises a field with an existing agricultural building adjacent to other buildings. Open countryside lies to the south and west. The application site history includes an extant permission for the conversion of the building into two dwellings under 20/P/2439/FUL.

The Application

Full planning permission is sought for the demolition of existing agricultural building and the erection of 2no. dwellings and associated carports.

New plans were received on March 4th that removed ground floor sleeping accommodation. For clarity, the new plans do not overcome the concerns in relation to flood risk (see below).

Relevant Planning History

Year: 2022
Reference: 21/P/3522/FUL
Proposal: Demolition of existing agricultural building and the erection of 2no. dwellings and associated carports
Decision: Refused – Appeal dismissed

Year: 2020
Reference: 20/P/2439/FUL
Proposal: Change of use of existing agricultural barn to 2no. residential dwellings including associated alterations
Decision: Approved with conditions

Year: 2019
Reference: 19/P/3194/CQA
Proposal: Prior approval for change of use from agricultural building and land to 2no. dwellings within use class C3, plus associated operational development comprising the replacement
Decision: Refused – not permitted development

Policy Framework

The site is affected by the following constraints:

- Outside the settlement boundary
- Landscape Character Area A1 Kingston Seymour and Puxton Moors
- Flood Zone 3a

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
CS3 Environmental impacts and flood risk management
CS4 Nature Conservation
CS5 Landscape and the historic environment
CS12 Achieving high quality design and place making
CS33 Smaller settlements and countryside

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
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
DM42	Accessible and adaptable housing and housing space standards
DM44	Replacement dwellings in the countryside
DM45	The conversion and re-use of rural buildings to residential use

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
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Other material policy guidance

National Planning Policy Framework (NPPF) (2023)

The following sections are particularly relevant to this proposal:

- 1 Introduction
- 2 Achieving Sustainable Development
- 3 Plan-making
- 4 Decision-making
- 5 Delivering a sufficient supply of homes
- 11 Making effective use of land
- 12 Achieving well designed and beautiful 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)

- 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 2021)
- North Somerset Landscape Character Assessment SPD (adopted September 2018)
- Biodiversity SPD (adopted January 2024)
- 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: 4 letters of support have been received. The principal planning points made are that the proposal will improve the appearance of the area

Wick St Lawrence Parish Council:

“The parish council supports this planning application. The proposed development will be an improvement on the existing run down Chicken Barn.”

Environment Agency

In the absence of an acceptable flood risk assessment (FRA) the EA objects to this application and recommend that planning permission is refused.

The proposed development increases the vulnerability of the site from low to more vulnerable as defined by the Planning Practice Guidance to the NPPF. The FRA does not show that the Exception test has been passed. It has not been demonstrated that occupiers of the residential building, would be sufficiently safe from flooding for the 100-year design life.

To overcome the objection, the applicant must submit revised designs and a revised FRA which provides a minimum freeboard on finished floor levels of 300mm to the design flood level. That is, finished floor levels must be no less than 7.78mAOD.

Officer comment

New plans were received on March 4th and the EA has been consulted. Members will be updated at the Committee should the position of the EA change. However, for clarity, the EA do not comment on the sequential test element, that is for the LPA to assess (see below).

Avon Fire Rescue

The additional residential developments will require additional hydrants to be installed and appropriately-sized water mains to be provided for fire-fighting purposes. Central Government does not provide any funding to Avon Fire & Rescue Service for the capital cost of growth related infrastructure. This additional infrastructure is required as a direct result of the developments and so the costs will need to be borne by developer.

Avon Fire & Rescue Service has calculated the cost of installation and five years maintenance of a Fire Hydrant to be £1,500 + vat per hydrant.

North Somerset Internal Drainage Board

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.

Land drainage consent would be required for any work within 9 m of top of the bank of any viewed rhye and watercourses.

Principal Planning Issues

Issue 1: The principle of residential development in this location

Core Strategy policy CS33 restricts new residential development in the open countryside to replacement dwellings, residential subdivision, residential conversion of buildings where alternative economic use is inappropriate, or dwellings for essential rural workers. The proposed erection of two dwellings does not directly relate to any of the above exceptions outlined within Policy CS33 for new residential development in the countryside and is unacceptable development in principle.

Planning permission has previously been granted for the '*Change of use of existing agricultural barn to 2no. residential dwellings including associated alterations*' (Planning application no: 20/P/2439/FUL). The planning permission expires in May 2024 and there are a number of pre-commencement conditions that need to be discharged prior to the development commencing, failing which the permission would lapse.

As noted, the application site currently has permission for the barn to be converted to two residential dwellings. That permission is a material planning consideration and forms a fallback position as it provides an alternative scheme which could be progressed if the current application is refused. The Court of Appeal in *Mansell v Tonbridge And Malling Borough Council [2017] EWCA Civ 1314 J* confirmed the legal considerations in determining the materiality of a fallback position.

Officers acknowledge that the previous permission is a fallback position. However, that permission was subject to drainage and highways pre-commencement conditions and is due to expire in May 2024. At the time of writing, the LPA has not received applications to discharge the pre-commencement conditions. In addition, it should be noted that the applicant has already previously applied to demolish the barn and erect two new dwellings in its place. That application was refused, and the subsequent appeal dismissed, but that proposal was not consistent with an intent to carry out the approved conversion and casts doubt as to whether there was a real prospect of the conversion taking place.

The Mansell case established that '*the basic principle is that for a prospect to be a "real prospect", it does not have to be probable or likely: a possibility will suffice.*' Permission exists to convert the barn to two dwellings and even with the outstanding pre-commencement conditions, there is a *possibility* that the barn could still be converted lawfully. Be that as it may, the case law is clear that it is for the decision maker to prescribe the relevant weight to the fallback position. In this particular case, the outstanding pre-commencement conditions together with the fact that this is the second application to seek permission to demolish the barn and erect two dwellings in its place indicates that the applicant seemingly has little intention to convert the barn to dwellings. As such, it is officer opinion that while the previous permission is a valid fallback position, the weight to be afforded to it should be limited.

Policy DM44 of the Sites and Policies Plan Part 1 concerning replacement dwellings in the countryside permits development on a 'one for one' basis, provided that the following criteria are met:

- The dwelling it replaces has an existing lawful permanent residential use
- The dwelling has not been abandoned
- The dwelling has not been granted planning permission for the conversion from a non-residential building

- The replacement dwelling is within the same curtilage and not out of scale or character with the surrounding area and its design and siting will not harm the character of the area, the living conditions of its own or adjoining occupiers and
- The replacement dwelling is no more than a 50% increase in the size of the dwelling it replaces providing that the dwelling itself is not a replacement dwelling.

The justification body of Policy DM44 states that *“the replacement of a former rural building that has previously been converted to residential use from a non-residential use e.g. barn conversions will not be permitted as the purpose of permitting the original conversion will have been based on the aim of reusing an existing building which was assessed as being of permanent and substantial construction and capable of conversion without major or complete reconstruction.”*

The existing rural building is characteristic of the rural agricultural landscape. Whilst the application site has permission for the conversion of the existing building into two dwellings (reference 20/P/2439/FUL), the existing buildings have not been converted to residential use, thus the residential use has not been established. Policy DM44 clearly does not permit rebuilding a rural building which was a non-residential use. Therefore, the proposal is contrary to policy DM44 of the Sites and Policies Plan (Part 1).

At present the Council cannot demonstrate a four year housing land supply as required by the National Planning Policy Framework (NPPF), with the most recently tested 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 and the application should be considered favourably unless the proposal conflicts with specified NPPF policies or the adverse impacts would significantly and demonstrably outweigh the benefits (NPPF paragraph 11). This matter is considered in in the ‘Planning Balance and Conclusion’ section of this report.

Issue 2: Flood Risk

The proposal is in flood zone 3a, and residential dwellings are classified as a *‘more vulnerable’* development use. The principal way to manage flood risk is to avoid locating development within areas at risk of flooding. To encourage developers to avoid flood risk areas, Government policy set out in the National Planning Policy Framework (NPPF) and related guidance, requires that a Sequential Test and Exception Test are passed before planning permission is granted for new dwellings in flood zone 3a.

The NPPF makes clear that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.

To achieve this, a sequential test must be applied. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test is applied.

To pass the exception test it should be demonstrated that:

a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Both elements of the exception test should be satisfied for development to be allocated or permitted.

The applicant has submitted a sequential test that has rejected all other sites within North Somerset. Officers consider the applicants have not provided sufficient reasons to discount all of the sites. For example, some sites are rejected by the applicant because *'the site is identified as having capacity for a significantly larger number of units than proposed'* or *'the type of development approved is not of the same character and scale of the proposals'*. These are not sound reasons to discount the sites. A reasonably available alternative site is one whose location lies within the district of North Somerset, can accommodate residential development, and would be available for development at the point in time envisaged for the proposal.

The PPG also says that such lower-risk sites do not need to be owned by the applicant to be considered reasonably available. Reasonably available sites can include ones that have been identified by the planning authority in site allocations or land availability assessments. There are no exclusions in the PPG relating to sites with planning permission or that publicly owned land must be formally declared to be surplus. The applicant has discounted a number of the sites as *'there is no evidence that the site is or would be 'available' for sale'*, however this is not a requirement of national policy.

Therefore, it is considered that the applicant has not demonstrated that there are no sequentially preferable, and reasonably available sites in flood risk terms, and has not carried out a sufficient comparison of the proposed site with other available sites to find out which has the lowest flood risk in accordance with the guidance. Therefore, the proposal does not demonstrate that the site passes the sequential test as required by the National Planning Policy Framework.

As the sequential test is not passed, the exceptions test is not required to be applied. Nevertheless, for the avoidance of doubt and given that an exceptions test has been submitted with this application, the question of whether there are (i) wider sustainability benefits to the community which outweigh the flood risk and (ii) whether the development will be safe for its lifetime without increasing flood risk elsewhere have been considered.

The site is located within Flood Zone 3a, which means the development would be located in an area with a high probability of flooding. The FRA submitted with the application has not demonstrated that the site will be safe for its lifetime. The Environment Agency has objected to the proposal as the FRA fails to take the impacts of climate change into account and consider how people will be kept safe from the identified flood hazards.

The proposed development is defined by Table 2 of the Planning Practice Guidance (PPG) as 'more vulnerable' and lies within Flood Zone 3, defined by Table 1 of the PPG as having a 'High Probability' of flooding.

Therefore, this 'more vulnerable' proposal would be at severe risk during the design flood event. It has not been shown that the development would be safe for its lifetime. Further plans have been submitted by the applicant to seek to address this and the committee will be updated.

In terms of the wider sustainability benefits for the community, the applicant is proposing to improve existing flood risk of the site and the greater Wick St Lawrence area by carrying out works to a number of rhynes and culverts within the vicinity. However, this land is outside of the application site and Land Drainage Consent would be required from the North Somerset Internal Drainage Board. This is a legal requirement and is separate to this planning application. As the proposed works to the rhynes do not have consent, there is no guarantee this would be acceptable and therefore cannot be considered a benefit to community.

The proposal would see a net increase of 2no. dwellings on the site. This proposed intensification of the site use by increasing the number of residential units would result in an increase in the number of households to be affected by any future flooding.

It is therefore considered that the exceptions test has not demonstrated that there would be any sustainability benefit to the wider community that would outweigh the flood risk and has not demonstrated that the proposal would be safe for its lifetime, as such the exceptions test is not passed, even if had been engaged. In this respect, it should also be noted that the planning permission to convert the existing building made use of an existing resource (ie the building). By re-using that existing resource, the conversion was an arguably more sustainable approach than its demolition and replacement by new buildings.

It is important to note that the previous permission to convert the building to two dwellings was not subject to the Sequential or Exceptions Tests. This is set out in Planning Practice Guidance (Paragraph: 014 Reference ID: 7-014-20220825) which states 'changes of use are not normally subject to the Sequential or Exception tests'. However, as the current scheme relates to the erection of two new dwellings, the Sequential and Exception tests are applied in full.

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. Even if the sequential test had been passed, this application as submitted, also fails to include a satisfactory Flood Risk Assessment that demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing the flood risk elsewhere and, where possible, reducing the flood risk overall. This is contrary to policy CS3 of the North Somerset Core Strategy, policy DM1 of the North Somerset Sites and Policies Plan (Part 1) and paragraphs 165 - 173 of the National Planning Policy Framework (and the associated Planning Practice Guidance).

In circumstances where a proposed development site is in an area at risk of flooding and where harm (in this case a risk of the development being flooded is likely over the lifetime of the development), the application of NPPF policies provide a clear reason for refusing the development proposed. This means that the 'tilted balance' set out in paragraph 11 of the NPPF is dis-engaged (see below).

Issue 3: Character and appearance

The proposed dwellings have been designed to harmonise with the existing buildings within the vicinity whilst remaining sympathetic to the rural landscape. The proposal would therefore not unacceptably harm the character of its surroundings. Indeed, the appearance of the two dwellings could be considered to be an improvement in design terms over the approved conversion. In this respect, the proposal complies with policy CS12 of the Core Strategy, policies DM32 and DM44 of the Sites and Policies Plan (Part 1).

Issue 4: Impact on neighbours

The proposed development complies with the relevant tests contained within the Residential Design Guide (Section 1: Protecting living conditions of neighbours) and would not result in a significant adverse impact upon the living conditions of neighbouring residents. In this respect, the proposal complies with policies DM32 and DM38 of the Sites and Policies Plan (Part 1).

Issue 5: Parking and highway safety

On-site parking provision is adequate and complies with the standards set out in the North Somerset Parking Standards SPD. The proposal is therefore in accordance policies DM24, DM28 and DM32 of the Sites and Policies Plan (Part 1).

Issue 6: Protected species (bats)

The submitted Bat Roost Assessment considered the existing building had negligible potential to support roosting bats. The proposal is therefore unlikely to affect features used by bats, however as a precaution, if the LPA were to approve the application, an advice note would be recommended warning the applicant of the requirements should bats be encountered during the development works. In this respect, regard has been paid to the requirements of the Conservation of Habitats and Species Regulations 2017 and the Natural Environment and Rural Communities Act 2006, and to policy CS4 of the North Somerset Core Strategy, policy DM8 of the Sites and Policies Plan (Part 1) and the council's Biodiversity and Trees SPD.

Issue 7: Setting of Listed Building

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

Issue 8: Community Infrastructure Levy

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 biodiversity.

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.

Local Financial Considerations

The Localism Act 2011 amended section 70 of the Town and Country Planning Act 1990 so that local financial considerations are now a material consideration in the determination of planning applications. This development is expected to generate New Homes Bonus contributions for the authority. However, it is considered that the development plan and other material considerations, as set out elsewhere in this report, continue to be the matters that carry greatest weight in the determination of this application.

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.

Planning Balance and Conclusion

At present the Council cannot demonstrate a sufficient supply of deliverable housing sites as required by the National Planning Policy Framework (NPPF), with the most recently tested 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. This is often referred to as the “tilted balance”.

Footnote 7 of the NPPF however clarifies that national policy relating to areas at risk of flooding or coastal change is one of the policies in the NPPF that are of particular importance and would provide a clear reason for refusing the development proposed. As the proposal would be located within Flood Zone 3a, and a conflict with national policy relating to flood risk is identified above, the tilted balance is not engaged and the proposal falls to be considered in accordance with national and local policies.

The benefits that might flow from the proposed development have been assessed and weighed against the harm that would arise from the development. Dealing with the benefits first, there would be economic investment into the local area through job creation during construction of the proposed dwellings. However, this is considered to only be a short-term and limited benefit to the economy given the minor scale of development and the fact that the approved conversion would also stimulate some construction work and therefore attracts very limited weight. The increase in population would add to the use of local facilities and services. However, given the minor scale of development and the fact that permission for the conversion of the existing building would create the same benefit this attracts very limited weight. The design and layout of the new dwellings is an improvement over the previously permitted conversion scheme. This attracts modest weight. The weight afforded to the contribution of the proposal to the housing land supply and housing mix is limited. Finally, the weight afforded to the fallback position is limited.

In terms of harms. Substantial weight is given to the conflict with policy CS3 and national policy relating to flood risk. Managing flood risk is a very significant national and local issue and should be given overriding weight. Significant weight is also afforded to the conflict with the strategic housing policies in the Local Plan.

Overall, the proposal would conflict with the development plan when taken as a whole and would also conflict with national planning policy on minimising flood risk to new development. Other material considerations including the fallback position, do not outweigh the harm caused. As such, the application is recommended for refusal.

RECOMMENDATION: REFUSE for the following reasons:

1. The proposed development of two new dwellings on a site outside a settlement boundary is contrary to policies that control residential development in the countryside, that are contained in the adopted development plan, which direct development away from unsustainable locations and as such the proposal is contrary to policies CS14 and CS33 of the North Somerset Core Strategy and policy SA2 of the Sites and Policies Plan (Part 2).
2. The proposed development does not constitute the replacement of an existing dwelling by reason that the existing building is an agricultural barn. Policy DM44,

which permits replacement dwellings, specifically excludes the replacement of a dwelling that has been granted permission for the conversion from a non-residential building. The proposal is contrary to the principles of policy DM44 of the North Somerset Sites and Policies Plan - Part 1.

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. This application as submitted, also fails to include a satisfactory Flood Risk Assessment that demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing the flood risk elsewhere and, where possible, reducing the flood risk overall. 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 165 - 175 of the National Planning Policy Framework (and the associated Planning Practice Guidance).