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## Appeal Decision

Site visit made on 2 March 2015

**by Phillip J G Ware BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 5 June 2015**

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**Appeal Ref: APP/Q3305/A/14/2223264**

**Land at Ashwell Lane, Glastonbury BA6 8LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr J Field against Mendip District Council.
  - The application Ref 2013/1814, is dated 21 August 2013.
  - The development proposed is residential development and access.
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Application for costs

2. An application for costs was made by Mr J Field against Mendip District Council. This application is the subject of a separate Decision.

### Main issues

3. There are five main issues in this case. These are:
  - Whether the proposal would be consistent with the aims of planning policies which resist development in the countryside
  - The effect on the character and appearance of the countryside
  - The effect on heritage assets and their settings
  - The effect on open space provision, in the absence of a Planning Obligation
  - The effect on the provision of affordable housing, in the absence of a Planning Obligation

## Reasons

### **Background**

4. The site is an open field to the south of Ashwell Lane. It slopes up from Edgarley Road to the south, and the gradient continues and steepens as it rises up Glastonbury Tor to the north.
5. There are some scattered dwellings in the vicinity, in particular to the north of Ashwell Lane, and houses being to the west of the site running towards the centre of Glastonbury (around 0.8 km away). Higher Edgarley House lies to the south, between the site and Edgarley Road – this property includes a small camping/caravan site, holiday cottages, a storage barn, and a solar array. Beyond Edgarley Road the land falls away to the Somerset Levels (The Levels).
6. The proposal is in outline, with illustrative plans showing a development of eleven detached dwellings along a spine road, with access from the north-eastern part of the site.

### **Policy related to sustainable development**

7. The Local Plan (LP) (2014) has recently been adopted. LP policy CP1 provides that, for sustainability reasons, the majority of development will be directed to main settlements, including Glastonbury. Outside settlements, in the open countryside, development will be strictly controlled (aside from certain exceptional circumstances which do not apply here). The LP does not define settlement limits. These will be included in a future Part 2 Plan but, in the meanwhile, the settlement limits within the Local Plan 2002 remain in place. The appeal site is outside the defined settlement limits and is therefore in the countryside for policy purposes.
8. LP policy CP2 deals with the overall provision of new housing and states that the LP makes provision for Mendip's objectively assessed housing needs.
9. There was a High Court challenge in relation to the Council's decision to adopt the LP, particularly in relation to housing provision, and the parties commented on this matter. However that challenge has since been withdrawn and the LP remains the up to date development plan for the area. The parties were advised of this and the appellant made no further comment aside from referring back to their main appeal statement. The Council did not respond.
10. The appellant has stated that, at the time the planning application was submitted to the Council, the authority indicated that it did not have a 5 year supply of housing land. However the Council's position is that this position has changed with the adoption of the LP. The appellant has stated that the Council's position is flawed for a range of reasons related to the way in which the housing land supply was calculated, under-delivery, and growth rates. The LP is recently adopted and I am not persuaded that the position has changed since adoption. As Planning Practice Guidance (PPG) makes clear, Local Plan examinations are intended to ensure that up-to-date housing

requirements and the deliverability of sites to meet a five year supply will have been thoroughly examined, in a way that cannot be replicated in the course of determining individual appeals. It is not my role to carry out some sort of local plan process to arrive at an alternative housing figure and I see no good reason to depart from the recently adopted plan.

11. That said, the existence of a five year housing land supply is not a cap on housing development in principle. The policy in the National Planning Policy Framework (The Framework) is to boost significantly the supply of housing. I will return to this matter below.
12. However, for the above reasons, it is clear that the proposal is outside the settlement limits and would not be consistent with the aims of planning policies which resist development in the countryside. It is in conflict with LP policy CP1 in terms of its location outside settlement limits.

### ***The effect on the countryside***

13. The policy context for considering the effect on the countryside is provided by LP Policy DP4. This states that proposals for development which would, individually or cumulatively, significantly degrade the quality of the local landscape will not be supported. More specifically it provides that proposals which would affect the setting of Special Landscape Features will be determined with regard to their impact upon their specific qualities, as described in the document entitled 'Assessment of Special Landscape Features' (ASLF) (2012). Glastonbury Tor is a nationally recognised hill with historic and cultural associations and is, unsurprisingly, defined as a Special Landscape Feature in the ASLF.
14. This approach towards the protection of the landscape reflects the approach of The Framework. One of the core planning principles in The Framework is that decisions should take into account the different roles and character of different areas, and recognise the intrinsic character and beauty of the countryside.
15. Glastonbury Tor is largely set in open countryside, and is especially visible from the south and southeast due to its position above the low-lying peat moors. When viewed from across The Levels, although the built form of Glastonbury is visible to the west of the Tor, the hill rises impressively above the largely open countryside. It is certainly true that there is some development along part of the foot of the Tor on its southern side but, viewed from across The Levels (from Lower Edgarley and beyond) this sporadic development does not significantly impact on the landscape setting of The Tor.
16. From a distance the proposed housing development (11 dwellings are shown on the illustrative plan) would have an alien and harmful effect on the character of the isolated hill surrounded by peat lowlands. As one moves closer to the site, the effect of the dwellings on the north side of Ashwell Lane, and of Higher Edgarley House to the southeast of the site, becomes more apparent and, as a consequence the effect on the landscape when viewed from the main road to the south of the site would not be as harmful,

as there is already a sense of being in a partly developed area at that point. However that does not overcome the significant harm caused to the wider area.

17. Overall the proposal would harm the character of the landscape and conflict with national and local policy as summarised above.

***The effect on heritage assets***

18. There are a number of Designated Heritage Assets in the vicinity of the appeal site. These are St Michael's Church Monastic and other settlement remains on Glastonbury Tor (a Scheduled Ancient Monument); St Michaels Church Tower (a Grade I Listed Building atop the Tor); the adjacent Glastonbury Conservation Area; and Higher Edgarley Farmhouse and Higher Edgarley Lodge (both Grade II Listed Buildings). The potential effect on these assets are considered below.
19. The development plan policy context for this consideration is LP policy DP3. This provides that proposals will be supported which preserve and, where appropriate, enhance the significance and setting of the District's Heritage Assets, whether statutorily or locally identified, especially those elements which contribute to the distinct identity of Mendip.
20. In terms of statute, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to have special regard to the desirability of preserving Listed Buildings or their settings. Application of that provision to the circumstances of an individual proposal means that 'considerable and importance and weight' must be given to the desirability of preservation or enhancement in any assessment of the merits of proposals. There would be a 'strong presumption' against the grant of planning permission for any development that would conflict with the objective of preserving listed buildings or their settings.
21. The appeal site is adjacent to but not within the Conservation Area, and accordingly the statutory duty under Section 72 of the Act, which relates to the character or appearance of a conservation area rather than its setting, does not apply in this case.
22. National policy guidance is set out in the Framework and confirms the great weight to be given in favour of the conservation of 'Designated Heritage Assets', such as listed buildings, scheduled monuments and conservation areas. The particular significance of any element of the historic environment likely to be affected by a development proposal should be identified and assessed. Any harm should require clear and convincing justification.

*St Michael's Church Monastic and other settlement remains on Glastonbury Tor (Scheduled Ancient Monument) and St Michaels Church Tower (Grade I).*

23. I will deal with the effect of the proposal on these heritage assets together because, although the statutory provision is different, the Tor and St Michael's Church Tower atop the Tor are, in many senses, part of the same heritage asset. The asset comprises a complex of settlement remains,

graves, building foundations and standing remains – showing occupation from the 5<sup>th</sup> century through to the Dissolution in 1539. Within that area is the Tower, which is all that remains of a 13<sup>th</sup> century church. The appellant has assessed these assets as being of High Significance and I agree.

24. The appellant has stated that the local setting of the Tor comprises its visual and functional relationship with Glastonbury and the Abbey to the west. On that basis the appellant assesses that the proposal would have a minor effect on the setting of the Tor and would comprise a negligible change in the significance of the asset. In relation to the Tower, the appellant makes similar points and concludes that there would be no effect on the setting of the Tower and no change to the significance of the asset.
25. I disagree with these assessments. The setting of a heritage asset is the surroundings in which it is experienced, and may be influenced by the landscape in which it is situated. In this case the setting of the Tor and the Tower derive largely from their prominent location above The Levels as the hill rises impressively from the landscape. This setting is therefore potentially susceptible to visual intrusion in views towards the historic site. Viewed from The Levels, the lower slopes and surroundings of the hill, once one is beyond the confines of Glastonbury, are largely free from significant development.
26. The proposed housing development would be around 300 metres from the Scheduled Monument and the Listed Tower and would be at the foot of the hill on gently rising ground. Viewed from the wider landscape the proposed extension of the built form along the base of the hill away from Glastonbury would detract from the sense of isolation which is one of the characteristics of the Tor and the Tower. This would represent a harmful impact on the setting and the significance of the assets.
27. An impact on the setting of an asset would generally cause 'less than substantial harm' (in the language of The Framework) unless the asset derives considerable significance from its setting. PPG advises that 'substantial harm is a high test, so it may not arise in many cases'. In this instance, I am conscious that English Heritage has stated (10 June 2014) that the proposal would not result in substantial harm to the significance of any Designated Heritage Asset, and that no objection was raised on that basis. However, for the reasons set out above, I consider there would be 'less than substantial harm' to the landscape setting of the assets from the surrounding lowlands. In relation specifically to the effect on St Michaels Church Tower this must attract significant importance and weight in that balancing exercise.
28. The proposal would therefore be contrary to LP policy DP3 in respect of these assets. Under paragraph 134 of The Framework, this harm requires to be balanced against the public benefits of the proposed development. However, before dealing with this balance, I will consider the other heritage assets.

### *The Glastonbury Conservation Area*

29. The Conservation Area, originally covering the central part of the town, was extended in 1992 to include The Tor and the land around it. The boundary of this extension lies on the opposite (north) side of Ashwell Lane. The appellant has assessed this asset as being of High Significance, and I agree.
30. The designation of the Conservation Area recognises that the land within the area is of greater significance historically, aesthetically and architecturally than the area around it. The part of the Conservation Area opposite the appeal site and further to the west is characterised by housing development and therefore, in principle, further houses outside the Conservation Area would be neutral in effect. The extent of the screening vegetation on the north side of the road would significantly separate the proposal from the houses within the designated area. The setting and significance of the Conservation Area would accordingly be preserved and there would be no conflict in this respect with LP policy DP3.

### *Grade II Listed buildings off Edgarley Road*

31. There are two Listed Buildings relatively close to the site – Higher Edgarley Farm directly to the east of the site, and Edgarley Lodge further to the southeast on the far side of the main road. Both are Grade II Listed, and are assessed by the appellant as being of Medium Significance. I have no reason to disagree with that assessment.
32. Higher Edgarley Farm is characterised mainly by its functional relationship with the adjacent farmyard, outbuildings and the former orchard (the appeal site) to the west. It is of late medieval origin but was substantially rebuilt and altered in the nineteenth century. Some limited development has already taken place within the former orchard, but nevertheless the appeal site continues to contribute to a limited extent to the original agricultural setting of the asset and hence to the significance of the building.
33. The proposed development would be close to the Listed Building and there would be numerous views from a range of directions of the farmhouse and the new development together. The appellant regards this as a limited change to the key elements of the building, and hence considers that the proposal would have only a minor effect on its setting and a negligible effect on its significance. I consider that, despite the limited development which has already taken place within the original farm, the proposed development would remove a significant part of the remaining farm enclave close to the farmhouse itself, and this would divorce the building from its original setting and detract from the understanding of the asset.
34. For these reasons I consider there would be 'less than substantial harm' to the landscape setting of Higher Edgarley Farm, and this must attract significant importance and weight in the balancing exercise. The proposal would be contrary to LP policy DP3 in respect of this asset.

35. I have considered the potential effect on Edgarley Lodge. However this asset is sufficiently separated in visual and functional terms that its setting or significance would not be harmed.

*Balance and conclusion on heritage assets*

36. In my judgement, St Michael's Church Monastic and other settlement remains on Glastonbury Tor, as a Scheduled Ancient Monument, together with St Michaels Church Tower (Grade I) are heritage assets of considerable importance. I have found that the setting of these assets makes a considerable contribution to their significance, particularly related to the wider landscape setting which affords the heritage assets their unique and imposing character. The proposal would cause 'less than substantial harm' to the significance of these assets by diminishing the sense of the hill rising up above the largely undeveloped Somerset Levels.
37. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. This advice applies to the Tor and the Tower. In addition, I have found less than substantial harm to the significance of Higher Edgarley Farm (Grade II).
38. Under paragraph 134 of The Framework, this harm must be balanced against the public benefits of the proposed development. In this case the provision of additional housing, whatever the position in relation to housing land supply, is a clear benefit in the light of national policy in The Framework to boost significantly the supply of housing. However the benefits accruing from the development would not outweigh the harm to heritage assets. Accordingly, giving great weight to the conservation of the heritage assets, the proposal would conflict with paragraphs 132 and 134 of The Framework, and LP Policy DP3.

***The effect on open space provision***

39. The Council criticises the scheme on the basis of the lack of a contribution, by way of a Planning Obligation, to public recreational open space. The Council's position is based on LP policy DP16, which deals with open space and green infrastructure, and provides that all new residential development will make a contribution towards the provision of new open space, including accessible natural greenspace, to meet the needs of the growing population. This can be provided on the development site or elsewhere.
40. From the submitted evidence this requirement is soundly based on a recently adopted development plan policy. The appellant has not disputed the relevance of the policy but has pointed out that the matter was not raised by the Council whilst the application was under consideration by the authority. He suggests that the issue could be resolved by the imposition of a condition.
41. Whilst it may be surprising that the issue was not raised by the Council at the application stage, it has also not been addressed on appeal by the

appellant by way of an Obligation. The matter could have a number of implications for the development and the advice in PPG is that a negatively worded condition limiting development until a planning obligation has been entered into is unlikely to be appropriate in the majority of cases. PPG allows for this to be done in exceptional circumstances in the case of more complex and strategically important development. I do not consider that the current proposal meets those criteria.

42. Given the clear and recent development plan policy I consider an Obligation is necessary in the light of paragraph 204 of The Framework and the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010. On that basis the proposal would harm open space provision and so would be in conflict with LP policy DP16.

***Affordable housing provision***

43. The relevant LP policy dealing with affordable housing is DP11, which provides that the Council will negotiate the provision of a contribution (30%) towards meeting the district's housing need from all housing proposals. This can either be on-site or by way of a commuted sum in lieu on smaller sites. No Planning Obligation has been put before me.
44. I am conscious of the Written Ministerial Statement dated 28 November 2014 setting out national policy on, amongst other matters, affordable housing contributions on smaller sites (10 units or less). Relevant changes were also made to PPG. In particular this national policy is that affordable housing contributions should not be sought from developments of 10-units or less. The proposal before me is in outline, but the illustrative plan and other material provided by the appellant clearly envisages a development of 11 units, although the appellant has suggested that could be reduced. As matters stand at the moment, I consider that policy DP11 affects the proposal, and that the position is not affected by the change in national policy.
45. On that basis, I consider the Council's position, namely to seek an element of affordable housing on the site, is soundly based on a recently adopted development plan policy. The appellant's position is similar to that set out above in relation to open space.
46. Again, it may be surprising that the issue was not raised by the Council at the application stage, but the matter has not been addressed on appeal by the appellant by way of an Obligation. The advice in PPG summarised above is relevant, and I do not consider that the matter could be resolved by a condition.
47. The appellant has stated that other proposals have been approved without an affordable housing element. However each application and appeal must be considered on their own merits, based on the relevant development plan policy at the time. In addition I do not have details of any such schemes, or their timing in relation to the adoption of the LP, and this argument is of little weight.



48. Given the clear and recent development plan policy I consider an Obligation is necessary in the light of paragraph 204 of The Framework and the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010. On that basis the proposal would harm the provision of affordable housing and so would be in conflict with LP policy DP11.

### **Planning balance and conclusion**

49. In conclusion, the proposal would conflict with policies restricting development in the countryside, would harm the landscape and harm number of heritage assets in the vicinity. In those respects it would conflict with the environmental role of sustainability as set out in The Framework. Although the provision of market housing would be a benefit in terms of the social role of sustainability, this benefit would be seriously diminished by the lack of an affordable element to meet the needs of present and future generations. To this must be added the lack of open space provision to reflect the needs of the community. There would be some limited economic benefit arising from construction jobs and a general, albeit slight, uplift in the local economic base.

50. Overall the harm caused by the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in LP and The Framework taken as a whole.

51. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*

Inspector