

APPEAL DECISIONS – 3 FEBRUARY 2022

Site: 3 KILLAMS AVENUE, TAUNTON, TA1 3YE

Proposal: Erection of a first floor extension over the garage at 3 Killams Avenue, Taunton (resubmission of 38/20/0409)

Application number: 38/21/0256

Reason for refusal: Allowed

Original Decision: Chair Decision



The Planning Inspectorate

Appeal Decision

Site visit made on 21 December 2021 by **Mr A**

Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/W3330/D/21/3282891

3 Killams Avenue, Taunton TA1 3YE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Anthony Flitton against the decision of Somerset West and Taunton Council.
 - The application Ref 38/21/0256, dated 16 June 2021, was refused by notice dated 2 August 2021.
 - The development proposed is a first floor extension over existing garage.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor extension over existing garage at 3 Killams Avenue, Taunton TA1 3YE in accordance with the terms of the application, Ref 38/21/0256, dated 16 June 2021, subject to the conditions in the attached schedule.

Main Issues

2. Although the Council has given three reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify two main issues.
3. Accordingly, the main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the surrounding area; and,
 - The effect of the proposed development on the living conditions of occupants of 5 Killams Avenue and 9 Killams Avenue with regards to loss of outlook and loss of privacy.

Reasons

Character and Appearance

4. The appeal site is located within a residential area. Dwellings within the surrounding residential area exhibit variety in terms of design and scale, with substantial two storey detached dwellings and bungalows being located adjacent to the appeal site. The appeal building is a sizable two storey detached dwelling which incorporates a substantially sized double garage. The appeal scheme seeks to erect a first floor extension over the existing substantially sized garage.
5. Policy DM1 of the Taunton Deane Borough Council Adopted Core Strategy 2011-2028 (the Core Strategy) sets out general requirements for all development and, amongst other matters, requires the appearance and character of any affected street scene not to be unacceptably harmed. Policy D5 of the Site Allocations and Development Management Plan 2016 (the SADMP) concerns extensions to dwellings and requires that extensions to integrate appropriately with local character and amenity. Policy D7 of the SADMP relates to design quality.
6. The proposed first floor extension would extend over the existing garage creating a large addition with a pitched half hip end roof over, and with a ridge height just below that of the host dwelling. By reason of the substantial scale of the existing building and garage and given that the proposed extension would not extend the width of the dwelling and would be at a lower height than the roof of the host dwelling, I am satisfied that the extension would satisfactorily respect the proportions and massing of the host building, and would appear subservient to the host dwelling in visual terms. Whilst the additional mass would reduce the openness of the street scene, I find that the change in openness would not be unacceptable or harmful to the street scene.
7. In my view, the proposed materials, scale and positioning of the appeal scheme would not result in a visually discordant or incongruous feature within the street scene. For these reasons, the proposed changes to the massing at first floor level above the existing garage would not be harmful to the character and appearance of the surrounding area, nor would be harmful to the character and appearance of the appeal building itself. Furthermore, the proposed dormer is modestly sized and in proportion with the scale of the proposed extension.
8. I therefore conclude that the scheme would integrate appropriately with local character and appearance in accordance with the relevant provisions of Policy DM1 of the Core Strategy and would accord with the provisions of Policies D5 and D7 of the SADMP. Furthermore, I find no conflict with those paragraphs of the

National Planning Policy Framework (the Framework) which concern achieving well designed places.

Living Conditions

9. The Council have raised concerns regarding the impact of the proposed extension on the living conditions of occupants of neighbouring properties at 5 and 9 Killams Avenue. Amongst other matters described above, Policy D5 of the SADMP also requires that development does not harm the residential amenity of other dwellings.
10. 9 Killams Avenue is located southwest of the appeal site and on the opposite side of the cul-de-sac which forms this part of Killams Avenue. In this respect, as noted above the proposed dormer would be modestly sized and, by reason of the significant separation distance between the host building and the dwelling at 9 Killams Avenue, I conclude that the proposal would not have an adverse effect on occupants of that neighbouring dwelling by reason of overlooking or loss of privacy.
11. The proposed extension would be positioned close to the shared boundary with 5 Killams Avenue. 5 Killams Avenue is set back from this shared boundary and comprises a single storey dwelling which, from observations made on my site visit, appeared to have its front elevation facing southwest. Whilst I accept that there would be some impact from the development given the increase in mass and bulk at first floor level, by reason of the separation distance between the properties, the proposed pitched slope of the roof of the proposed extension and given that a significant open aspect would remain to the front of this neighbouring dwelling, I consider that the extension would not significantly dominate the views to cause an overbearing effect nor an unacceptable sense of enclosure.
12. Taking these factors into consideration, I am not persuaded that a compelling case has been made that there is insufficient separation between buildings and that the development would result in an overbearing impact or unacceptable loss of privacy for residents of the two neighbouring properties described above. Therefore, the appeal scheme would comply with Policy D5 of the SADMP and the provisions of the Framework with regards to the amenity of residents.

Other Matters

13. I note from the Officer's report that the appeal site is located within Band C of the Bat Consultation Zone for the Hestercombe House Special Area of Conservation (the SAC). However, I would agree with the Council in that the evidence demonstrates that the proposed development is highly unlikely to have an effect on lesser horseshoe bats associated with this SAC.

Conditions

14. The Council have suggested conditions in the event that the appeal is allowed. Where necessary, and in the interests of clarity and precision, I have altered the wording of the conditions suggested by the Council. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. In order to protect the character and appearance of the surrounding area and the host dwelling, I am attaching a condition requiring materials used in the construction of the external surfaces of the development to match those used in the existing building.

15. Further to the above, I have also noted that additional conditions and informative details are discussed within the Officer's report. In these respects, having regard to ecological matters, bird boxes and an insect tower should be introduced. Whilst I note the inclusion of informative details within the Officer's report, and acknowledge their importance, these informatives cannot be used in lieu of planning conditions. These items are included within the Officer's report for information only and do not constitute planning conditions.
16. I also note that within the questionnaire, the Council have suggested that a condition be applied which prevents the introduction of any new windows on first floor elevations. I have considered this matter in light of the provisions of paragraph 54 of the Framework, and conclude that in order to prevent unacceptable levels of overlooking and loss of privacy at 5 and 7 Killams Avenue, a condition should be attached which prevents additional windows being incorporated within the southern and eastern elevations of the proposed development.

Conclusion

17. For the reasons given above, the appeal succeeds and planning permission is granted subject to the conditions identified.

Mr A Spencer-Peet

INSPECTOR

5 Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby approved shall in all respects accord strictly with drawing numbers: 01 Location Plan, 02 Block Plan and 04 Existing Plans & Elevations dated December 2020 and drawing numbers: 11 Proposed Plans Elevations & Section Scheme VI and 12 Proposed Block Plan Scheme VI dated February 2021 .
3. The external materials to be used in the construction of the development hereby permitted shall match those used in the existing dwelling.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be inserted or constructed at any time at first floor level in the eastern and southern facing elevations of the development hereby permitted.
5. Before the first use of the development hereby approved, details shall be submitted to and approved in writing by the Local Planning Authority of the position of a 1B Schwegler bird box or similar, a 2H Schwegler bird box or similar and an Elba insect tower or similar with a timetable for their installation, and the insect tower and bird boxes shall then be installed in accordance with the approved details and timetable and thereafter retained.

Site: PEN ELM, MINEHEAD ROAD, NORTON FITZWARREN, TAUNTON, TA2 6PD

Proposal: Conversion of outbuilding to 1 No. detached dwelling within the domestic garden of Pen Elm, Minehead Road, Norton Fitzwarren (resubmission of 25/19/0023)

Application number: 25/20/0018

Reason for refusal: Allowed

Original Decision: Chair Decision



Appeal Decision

Site visit made on 17 November 2021 by **Matthew Jones BA(Hons) MA MRTPI**
an Inspector appointed by the Secretary of State

Decision date: 14 January 2022

6 Appeal Ref: APP/W3330/W/21/3280421 Pen Elm, Minehead Road, Norton Fitzwarren, Taunton TA2 6PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Sheryl Hunt against the decision of Somerset West and Taunton Council.
 - The application Ref 25/20/0018, dated 22 July 2020, was refused by notice dated 9 February 2021.
 - The development proposed is subdivision of the existing dwelling to create a separate dwelling within a domestic outbuilding.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of outbuilding to 1 No. detached dwelling within the domestic garden of Pen Elm at Pen Elm, Minehead Road, Norton Fitzwarren, Taunton TA2 6PD in accordance with the terms of the application Ref 25/20/0018, dated 22 July 2020, subject to the conditions in the attached schedule.

Procedural Matters

2. I have used the description of development contained within the Council's decision notice in my decision above as it most accurately reflects the proposal.
3. During the appeal a Unilateral Undertaking (the UU) was submitted which seeks to secure mitigation with regard to the potential effects of the proposal on the integrity of

the Somerset Levels and Moors Special Protection Area and listed Ramsar site (the SPA). I return to this matter later in my decision.

Main Issues

4. The main issues are:

- the suitability of the site for the proposal, having regard to the development plan's approach to the supply of housing; and,
- the effect of the proposal on the integrity of the SPA.

Reasons

Suitability of the site

5. The site comprises a disused building within the grounds of the dwelling Pen Elm, accessed from the A358, the main road between Taunton and Minehead. A scheme for the conversion of the building to a dwelling was dismissed at appeal in 2020¹. Pen Elm is part of sporadic development which extends along this section of the A358 from Taunton, which is close by to the south east. To the south, beyond open fields, is the village of Norton Fitzwarren.
6. Policy SP1 of the Taunton Deane Borough Council Core Strategy 2011-2028 (adopted 2012) (CS) directs growth to the most sustainable and accessible locations, with Taunton a focal point for development. It states that sites beyond identified settlements, as is the case at Pen Elm, are within the designated open countryside. Policy SB1 of the Site Allocations and Development Management Plan (adopted 2016) (SADMP) provides that, in such locations, Policies CP1, CP8 and DM2 of the CS should be applied to development proposals. I turn to Policy CP8 later in my decision.
7. Amongst other things, Policy CP1 seeks to reduce the need to travel through locational decisions. Pen Elm is a reasonable walking distance to a shop selling groceries and other commodities, and a public house. These facilities are accessed by walking south east aside the A358 along a near continuous, largely lit pavement, which itself hosts bus stops which provide access to northwest bound services. Norton Fitzwarren has a primary school that can be reached via a Public Right of Way which, although unmade, is well compacted, quite level and, in my view having walked it, a passable option for the school run.
8. Getting to the pavement and the PROW requires crossing the A358. However, aside Pen Elm it is a single carriageway, has one lane in each direction, and is restricted to a 40-mph speed limit. Whilst one may well have to wait a short while for a break in the traffic, visibility in both directions is good and crossing here is little different in safety terms to crossing a main road within an urban area. Crossing back is necessary at the shop and public house, where the road is wider and traffic movements more hectic, but there are traffic islands here which provide a safe refuge when doing so.
9. There is also a child's nursery and a café very close by to Pen Elm to the north west. Although a stronger argument can be made for difficulty in walking back across the A358 to reach them, they are a very short drive away from Pen Elm indeed. Taking all of these factors into account, it is my opinion that occupants of the dwelling would be little more inclined to travel than people living in Taunton. The locational test set out within Policy CP1 would therefore be met.

10. Policy DM2 applies a sequential approach to the conversion of existing buildings within the open countryside. My assessment is focused on those steps of the sequential approach to which there is dispute between the main parties.
11. Steps two and three require a Use Class B business use (as was) or other employment generating use. Given the close relationship of the site to Pen Elm, uses previously within Classes B2 or B8 would likely be inappropriate, given their proclivity to generate noise, fumes, or activity during antisocial hours. Regarding the former Class B1, the appellant has provided online marketing as of July 2021 which shows a variety of vacant commercial units in Taunton. This demonstrates the likelihood that a commercial use of the site would have to compete with bespoke and immediately available sites in Taunton, which I do not find realistic. Moreover, given the shape and modest size of the building, it is unclear what other employment generating use it could practically support.
12. The fourth step is for a holiday or tourism related use. Paragraph 6.19 of the supporting text to Policy DM2 is clear and unambiguous when read in a straightforward manner and as a whole. It states that, due to evidence of holiday homes outstripping demand, tourism and holiday home uses should be restricted to the conversion of existing buildings in instances of rural diversification. Consequently, this step of the sequential test does not apply to the circumstances of the appeal proposal.
13. The fifth step requires affordable, farm or forestry dwellings. The appellant has asserted that the need for affordable housing (AH) in the area is being met by large residential allocations in and around Taunton. The Council has offered no contrary evidence of any unmet local AH need with which this can be disputed.
14. There is no farm or forestry requirement for a dwelling relating to land within the appellant's control. With regard to the suggestion that the scheme could provide a farm or forestry dwelling for an operation elsewhere, I am mindful that it is common for such a need to be generated by a requirement to be within sight and sound of the relevant activity. Also, if there was offsite demand as suggested, it seems to me that it could equally be met by the mixture of housing available within Taunton. These issues cast significant doubt in my mind about how realistic the site would be as a candidate for such uses.
15. Bringing my findings together, the form and size of the building, its intimacy with Pen Elm and its proximity to Taunton, form the exceptional circumstances where the conversion of an existing building to an open market dwelling would accord with the requirements of Policy DM2.
16. I therefore conclude on this issue that the site would be suitable for the proposal, having regard to the development plan's approach to the supply of housing. The scheme would accord with the relevant aims of Policies SP1, CP1 and DM2 of the CS, Policy SB1 of the SADMP and the National Planning Policy Framework (the Framework).

European Designated Site

17. The site is within the catchment area of the SPA, which, as a European Designated Site and Ramsar site, is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Habitats Regulations).
18. The SPA is so designated owing to its wetland habitats which support a variety of wildlife, notably aquatic invertebrates. In August 2020, Natural England (NE) informed

the Council and other relevant local planning authorities about unfavourably high levels of phosphates recorded in the SPA. Residential development can contribute to this issue through the discharge of wastewater, and I must therefore consider this matter in relation to the appeal proposal.

19. The appeal is accompanied by a Nutrient Neutrality Assessment which proposes to offset the phosphate surplus arising from the proposal through the use of a package treatment plant (PTP) discharging to a drainage field to the north west. It has been latterly confirmed that the percolation test locations which support the use of soakaways are consistent with the proposed discharge point of the PTP. These integral measures have now satisfied the Council's ecology expert, and also NE, that likely significant effects on the integrity of the SPA can be ruled out. I have no reason to disagree.
20. The UU before me seeks to secure the drainage strategy, albeit it requires the exact details of the specification of the PTP and monitoring and maintenance arrangements to be later agreed. The Council has highlighted drafting errors relating to the given name of the Council and the reference number of the planning application. However, the first error is inconsequential, and the appeal reference and this decision letter are both correctly addressed in the UU. On this basis, I am satisfied that the UU would take effect.
21. Both the Council and NE have stated that a condition should also be employed seeking foul drainage details, which would have to be agreed prior to the commencement of the development. This would represent a degree of duplication with the UU. However, given the Council's further concerns about the wording of Schedule 1 of the UU, I agree that a condition is required in this instance to provide requisite certainty and when applying the precautionary principle to the SPA issue. Given these integral measures proposed, and the method of securing their delivery, I can ascertain at the screening stage that likely significant effects on the integrity of the SPA can be ruled out.
22. Consequently, I conclude on this issue that the proposal would not have an adverse effect on the integrity of the SPA. It would accord with Policies DM1 and CP8 of the CS, the provisions of the Habitats Regulations and the Framework insofar as they seek to secure the long-term protection of such sites and mitigate any adverse effects on their integrity.

Other Matters

23. The site is also within influence of the Hestercombe House Special Area of Conservation (SAC), so designated for its lesser horseshoe bat maternity roost. The landscape surrounding the SAC provides important commuting and foraging habitat for bats associated with the SAC. However, the developed nature of the site and its proximity to the A358 make it highly unlikely that bats make use of it. Nonetheless, the mature hedgerows and fields to the north east of the site present some potential foraging and commuting opportunities. A condition controlling external lighting would provide an integral measure to ensure that likely significant effects on the SAC can be screened out in the first instance.

Conditions

24. It is necessary to identify the approved plans in the interest of certainty. In the interest of highway safety, it is necessary to ensure that any access gates open inwards and are set back from the carriageway edge. However, I see no reason why, given highway conditions aside the site and the likely modest additional use of the

access, it should be required to demonstrate that the access can accommodate two-way traffic. In the interest of ecology, a condition is needed to ensure that the works take place outside of the bird nesting season and, in order to provide biodiversity gain, details of bird nesting and hedgehog access measures are also required. Given the potential for any additional storey to affect the living conditions of the occupants of Pen Elm, a condition is necessary to remove permitted development rights in this regard.

Conclusion

25. For the reasons outlined above, and taking all other matters raised into account, I shall allow the appeal.

Matthew Jones

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: GHU2079, Site Plan, Proposed vehicular access, Site Location Plan.
- 3) No development shall commence until a detailed implementable scheme for the disposal of foul drainage from the development has been submitted to and approved in writing by the local planning authority. Such scheme should be based on the proposals set out in Section 5 of the Nutrient Neutrality Assessment dated 22 July 2021 prepared by RMA Environmental, unless otherwise agreed by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and completed prior to the occupation of the dwelling hereby approved.
- 4) Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 6 metres from the highway boundary.
- 5) Prior to construction above damp-proof course level, a 'lighting design for bats' shall be submitted to and approved in writing by the local planning authority. The design shall demonstrate that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the details approved and shall be retained thereafter. No other external lighting shall be installed.
- 6) No removal of vegetation or works to the buildings or structures shall take place between 1st March and 31st August inclusive, unless a competent ecologist provides written confirmation that no birds will be harmed and/or there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority by the ecologist accompanied by dated photos showing the site before and after clearance.
- 7) Provision will be made for nesting swallows and the free movement of hedgehogs between properties and the surrounding landscape. Plans and photographs of the installed features will be submitted to and agreed in writing by the local planning authority prior to first occupation of the dwelling hereby approved.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no construction of additional storeys shall be carried out.