

DECISIONS – 9 JULY 2020

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

Proposal: Conversion of stables to 1 No. detached dwelling within the domestic garden of Pen Elm, Minehead Road, Norton Fitzwarren

Application number: 25/19/0023

Reason for refusal: Appeal – Dismissed
Costs – Refused



The Planning Inspectorate

Appeal Decision

Site visit made on 2 June 2020 by Scott Britnell MSc FdA

Decision by R C Kirby BA(Hons) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/W3330/W/20/3245967

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 25/19/0023, dated 15 October 2019, was refused by notice dated 20 December 2019.
 - 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 dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. The main issue in this case is whether the appeal site is in a suitable location for a new dwelling.

Reasons for the Recommendation

4. The appeal site comprises an existing outbuilding set within the large grounds of a detached dwelling, Pen Elm, within the open countryside. It sits on the northern side of the A358, to the north west of Taunton and north of Norton Fitzwarren. To the east is a short terrace of dwellings and to the west is a collection of other residential properties, beyond which is a garden centre.
5. In this respect and having regard to the Braintree District Council Court of Appeal ruling¹, I find that the new dwelling would be nearby existing development. It would not, despite both party's views in this regard, result in an isolated home in the countryside in terms of paragraph 79 of the National Planning Policy Framework (Framework). Accordingly, this paragraph of the Framework is not a material consideration in this appeal.

¹ [2018] EWCA Civ 610 Case No: C1/2017/3292.

6. Within the countryside, Policy DM2 of the Adopted Taunton Deane Core Strategy 2011-2028 Development Plan Document September 2012 (CS) sets out the types of development that will be permitted in the countryside. The supporting text to Policy DM2 confirms that it seeks to control development outside of settlements to promote sustainable patterns of development.
7. The conversion of an existing building falls under a type of development that is permitted in the countryside under Policy DM2. However, the policy makes clear that a residential use of such a building will only be acceptable in exceptional circumstances, and where other uses set out within Paragraph 7 of the policy are demonstrably unsuitable.
8. There is no evidence before me that the appellant has demonstrated the building is unsuitable for all other listed uses under Policy DM2 Paragraph 7, with the appeal statement responding only to the Council's query concerning a potential Class B Use. In the absence of such information, it is clear that the sequential approach required by CS Policy DM2 has not been complied with. Consequently, I find that it has not been demonstrated that the appeal site is suitably located for a new dwelling.
9. My attention has been drawn to planning permissions and appeal decisions which the appellant considers are similar to her proposal. While the information provided describes the relationship of those proposals to nearby development, I do not have the full details relating to these cases. Moreover, it is evident in these cases that paragraph 79d of the Framework was considered to apply, which is not the case in this appeal. As such, I do not consider that these cases are directly comparable to the appeal before me and I afford them limited weight.
10. In light of my findings, I conclude that the location of the appeal site is not suitable for a new dwelling because of the conflict with CS Policy DM2, and the spatial strategy underpinning Policy SB1 of the Taunton Deane Adopted Site Allocations and Development Management Plan December 2016 and Policy SP1 of the CS. These seek, among other things, to control development in the countryside and focus development on the most accessible and sustainable locations and seek to ensure a sustainable approach to development. These policies are broadly

consistent with the Framework which seeks to ensure that: sufficient land of the right type is available in the right places and at the right time to support growth; that homes are provided with accessible services, and, the number and length of journeys needed for employment, shopping, leisure, education and other activities are minimised. Accordingly, they are given full weight in my consideration of this case.

11. The appellant suggests that the planning permission for the conversion of the outbuilding to a residential annexe is a fall-back position that justifies the proposed development. Whilst this may be the case, the use of that building was considered under different plan policies to the proposal before me. Moreover, there are differences between how an ancillary residential use and a separate residential dwelling would function. The likely relationship between the occupants of ancillary accommodation and the main dwelling, for example, means that they are likely to share car journeys for purposes such as shopping or medical appointments. As such, an ancillary use is likely to result in less independent car journeys as a separate residential dwelling. This matter does not therefore outweigh the conflict with the development plan that I have found.

Conclusion and Recommendation

12. For the reasons given above, I recommend that the appeal should be dismissed.

Scott Britnell

APPEAL PLANNING OFFICER

Inspector's Decision

13. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

R C Kirby
INSPECTOR



Costs Decision

Site visit made on 2 June 2020 by Scott Britnell MSc FdA

Decision by R C Kirby BA(Hons) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

**Costs application in relation to Appeal Ref:
APP/W3330/W/20/3245967 Pen Elm, Minehead Road, Norton
Fitzwarren, Taunton TA2 6PD**

- The application is made under the Town and Country Planning Act 1990, Sections 78, 322 and Schedule 6, and the Local Government Act 1972, Section 250(5).
 - The application is made by Mrs Sheryl Hunt for a full award of costs against Somerset West and Taunton Council.
 - The appeal was against the refusal of planning permission described as the subdivision of the existing dwelling to create a separate dwelling within a domestic outbuilding.
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Decision

1. The application for costs is refused.

Application Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the application.

Reasons for the Recommendation

3. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
4. The applicant suggests that the Council, in reaching the conclusion that it has, has prevented or delayed development which accords with the development plan, national policy or any other material considerations. She suggests that the policies of the development plan should be afforded limited weight, as they are inconsistent with the National Planning Policy Framework (Framework), specifically paragraph 79d.
5. Whilst I did not agree with the parties that the proposal would result in an isolated home in the countryside, I am satisfied that the Council substantiated its reasons for refusing the planning application at the planning appeal stage, making reference to the relevant policy of the development plan and addressing the matters raised by the appellant with regard to Framework paragraph 79d. It did not act unreasonably in this regard.
6. The applicant also suggests that the Council has failed to determine similar cases in a consistent manner, referring to a number of examples where she considers the same issues apply which have been granted planning permission. Within its evidence the Council has substantiated its approach in respect of this issue, highlighting the difference between the examples referred to and setting out why a different decision was reached in this case. Indeed, I found that the circumstances of the examples referred to differ from the proposal before me. It did not act unreasonably in this regard.
7. It is submitted that the Council did not take proper account of the fall-back position to use the building as a residential annexe. I find that the Council considered this matter in its officer's report, appeal statement and response to this costs application and therefore substantiated its position in regard to this matter. It did not act unreasonably in this regard.
8. In light of the above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice

Guidance, has not been demonstrated.

Conclusion and Recommendation

9. For the reasons given above, I recommend that the application for costs should be refused.

Scott Britnell

APPEAL PLANNING OFFICER

Inspector's Decision

10. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the application for costs is refused.

R C Kirby

INSPECTOR

Site: Land at Paddons Farm, Stogursey, TA5 1BG

Proposal: Erection of a residential development comprising of 27 No. dwellings, relocation of childrens play area and associated works

Application number: 3/32/19/019

Reason for refusal: Appeal – Dismissed



Appeal Decision

Site visit made on 26 May 2020

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

an Inspector appointed by the Secretary of State

Decision date: 24 June 2020

Appeal Ref:

APP/W3330/W/20/3245966 Land at Paddons Farm, Stogursey TA5 1BG

- 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 R Alford of Strongvox Homes against the decision of Somerset West and Taunton Council.
 - The application Ref 3/32/19/019, dated 17 May 2019, was refused by notice dated 23 December 2019.
 - The development proposed is described as the proposed development of 27 dwellings, the relocation of children's play area and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There are discrepancies between the appeal site address and descriptions of development on the Council's decision notice and the original application form and appeal form submitted by the Appellant. For consistency, I have used the address and description of development from the application form in the banner at the top of this decision letter.

Background and Main Issues

3. As noted above, the description of development in the banner heading has been

taken from the application form. However, the appeal site is part of a larger development site which was granted permission for the erection of fifty nine dwellings, and associated works, in April 2007¹ (the Original Scheme). Whilst that planning permission was implemented, the development was only partially completed with thirty nine of the fifty nine dwellings being constructed in full. This appeal concerns a scheme which would seek to provide an additional twenty seven dwellings at the site, which would represent an overall increase of seven dwellings when compared to the Original Scheme.

4. Although the Council has given two reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify three main issues.

¹ Local Planning Authority Reference: 3/32/07/008

5. The main issues are:

- Whether future and existing residents would be likely to experience acceptable living conditions in terms of amenity space and access to recreation facilities;
- Whether future and existing residents would be likely to experience acceptable living conditions in terms of parking provision; and
- The effect of the proposed development on the character and appearance of the surrounding area including the setting of the Stogursey Conservation Area (the Conservation Area).

Reasons

Site Description

6. The appeal site comprises land at Paddons Farm, being located within, but at the edge of, the village of Stogursey and within the Conservation Area. The site is bounded by residential development to the west at St Audries Close and Park View, and by part of Church Street which runs adjacent to the southern boundary of the site. Stogursey Brook winds its way through the appeal site and to the east of the existing residential dwellings within Paddons Farm. Stogursey Brook is crossed in two places within the site, a pedestrian footbridge within the southern section of the site and a vehicle bridge being located within the eastern section of the site.

Amenity Space and Recreation Facilities

7. Policy R/5 of the West Somerset Local Plan to 2032 (the Local Plan) concerns the provision of public open space in relation to large developments, and provides that development proposals include a minimum amount of public open space based on a ratio of one hectare per 173 dwellings or part thereof. This policy further advises that open space can include certain elements such as, amongst other things, children's play space.
8. The evidence before me confirms that whilst the appeal scheme would result in the loss of some public open space, the remaining space available at Paddons Farm would be in excess of that required under Policy R/5 of the Local Plan. Whilst I shall return to the matter of children's play space further below,

the appeal proposal would provide a fenced play space which would benefit from the natural surveillance that would be provided by two of the additional dwellings that form part of the appeal scheme. For these reasons, I conclude that the appeal scheme would comply with the provisions of Policy R/5 of the Local Plan.

9. Within the reasons for refusal, the Council have maintained that the proposal would conflict with Policy R/7 of the Local Plan. Policy R/7 of the Local Plan concerns development of land identified on the Settlement Inset Maps as important amenity open space, and the Appellant has put it to me that the appeal site has not been identified on the Settlement Inset Maps for such a use. The Council has not disputed the Appellant's submission in this regard and there is no evidence before me which demonstrates that the appeal site has been identified as important amenity space within the context of this policy. Therefore, assessment of the proposal against this policy is not required in this instance.
10. Policy CF1 of the Local Plan concerns access to health, sport, recreation and cultural facilities and confirms that where development results in the loss of such facilities, equivalent or greater replacement facilities must be provided. Whilst I acknowledge the submission of the Appellant with regards to the applicability of this policy in relation to play areas, in my view the existing children's play area would represent a recreation facility and therefore its loss and potential replacement should be assessed in the context of this policy.
11. The appeal scheme seeks to replace the existing recreation facility and the evidence before me indicates that the replacement facility would be larger in terms of area and would be better equipped than the existing facility. However, the Council have put it to me that the new recreation facility would be less accessible, less convenient, less usable and less attractive than the existing facility.
12. Whilst I acknowledge the Appellant's submissions in respect of the test of whether the proposal is acceptable having regards to the relevant policies of the Development Plan and material considerations, where there is a loss of a recreation facility, as is the case in respect of the appeal proposal, the wording of the Policy requires that equivalent or greater facilities are provided, and, in my view, this is not limited to just equivalent or greater levels of equipment or space, but also includes, for example, the degree to which the facility is able to be used safely and the degree of accessibility to the facility.
13. In terms of the contention that the replacement facility would be less attractive, I conclude that the replacement facility would be equivalently attractive for users to that of the existing play area. In respect of accessibility, the proposed replacement facility would be served by two footways which would provide appropriate access, including a predominately level footway which would provide appropriate access to the play area for wheelchairs and pushchairs. Access to the existing recreational facility currently requires crossing grassed land which may present difficulties for those with wheelchairs or pushchairs. I therefore conclude that the replacement facility would represent an improvement to the existing recreation facility with regards to accessibility and convenience.
14. Notwithstanding the above, to comply with Policy CF1 of the Local Plan, the replacement facility must also be at least equivalent to the existing facility in terms of safety for its users. In this regard, it has been put to me that the location of the replacement facility adjacent to Stogursey Brook would represent a safety hazard for children.

15. Whilst I note the comments and submissions from all parties and agree that the safety of children entering and exiting the replacement facility may be placed at risk from falling or climbing down the steep bank to Stogursey Brook, the facility itself would be fenced and additional conditions could be imposed that required additional safety fencing be placed adjacent to Stogursey Brook between the replacement facility and the nearby footbridge over the brook.
16. However, and in respect of the safety of children, a significant portion of the proposed replacement facility would be located close to or directly under the canopy of mature trees which are substantial in terms of their height and spread. Whilst I note the submissions of the main parties with regards to the shading that these trees would provide, falling debris from these trees would represent a significant threat to the safety of children and other users of the proposed replacement facility and, without sufficient regular upkeep of the facility may result in equipment being unusable due to fallen debris and leaves. This may result in pressure to lop, top or even remove these trees which, in my view, make a significant positive contribution to the character and appearance of the area.
17. The existing facility is located away from safety risks associated with the trees which are located on the banks of Stogursey Brook within the appeal site, and, therefore, when taken as a whole the proposed replacement facility would not be equivalent to the existing facility in terms of providing a safe space for its users. Consequently, the appeal scheme would conflict with Policy CF1 of the Local Plan when taken as a whole and, given this conflict and the importance that the National Planning Policy Framework (the Framework) places on development contributing to healthy and safe communities, this is a matter which weighs significantly against the appeal proposal.
18. Whilst I note that the Appellant maintains that there would be sufficient space within the site to reposition the recreational facility, I have not been provided with any plan which could be referred to within any additional condition or amendment to the associated planning obligation and which would provide certainty in relation to the specific siting of the recreational facility. I have therefore determined this appeal on the plans and drawings provided by the Appellant in relation to the appeal proposal.

Parking Provision

19. Policy T/8 of the Local Plan states that parking at residential sites should be in accordance with the parking guidelines provided in the form of a table. For residential dwellings the maximum provision is two spaces per dwelling.
20. Paragraph 106 of the Framework confirms that maximum parking standards should only be applied where there is clear and compelling justification that such measures are necessary or for optimising the density of development at locations that are well served by public transport.
21. The Council maintain that the appeal proposal would result in the overprovision of twelve spaces at the site. However, the Council have also confirmed that the appeal site is not well served by public transport. Furthermore, it is noted that a number of objections have been submitted by interested parties which indicate that the lack of parking in respect of the Original Scheme and within the wider surrounding area, has resulted in on street parking congestion and vehicle access issues at Paddons Farm. In this regard, it is also noted that eleven of the twelve additional parking spaces above the maximum provision, relate to visitor spaces

within the site.

22. Given the above, I conclude that the additional parking proposed would free up space within the estate from on street parking, resulting in improvement to the free flow of traffic within Paddons Farm. Furthermore, given that the Council maintains that Stogursey is not well served by public transport, I conclude that the maximum standards imposed by Policy T/8 of the Local Plan should not apply in relation to this specific location.
23. I am mindful that the Highways Authority has not objected to the appeal proposal and I have not been provided with any substantive evidence by the Council to justify the maximum parking standard in this instance. Consequently, I conclude that the appeal scheme would make appropriate provision for parking and, therefore, the proposal would be consistent with the aims and objectives of Policy T/8 of the Local Plan.

Character and Appearance

24. Residential development within Stogursey and close to the appeal site comprises a mixture of traditional dwellings and more modern forms of development, which are principally single storey or two storey in height and which are densely arranged in groups of predominately attached dwellings on modest sized plots.
25. The proposal would introduce additional housing at the site, as detailed above in the Background section of this decision, and the Council considers that the resulting quantum of development at the site would be at odds with the character and appearance of the surrounding area and would thereby be harmful to the setting of the Conservation Area.
26. The proposal would introduce a mixture of housing which, in combination with the residential dwellings that were constructed under the Original Scheme, would, in my view, reflect the pattern of development and density of housing which exists in the locality such as that at St Audries Close.
27. The proposed gardens would be a similar size to existing external amenity areas which serve properties close to the appeal site and within the Conservation Area. Whilst I acknowledge that some parking spaces would not be located immediately adjacent to the corresponding dwelling, they would be within a very short and convenient distance and therefore would not compromise the functionality of the site. Furthermore, the appeal scheme would preserve the footway link between Paddons Farm and Park View, and therefore the proposal would not compromise the use of this important feature which provides pedestrian links to the village centre.
28. For the above reasons, I conclude that the proposed increased density of housing at the appeal site would not result in a form of development that appeared to be cramped or that the site could be considered to be overdeveloped. The appeal scheme would not be harmful to the character and appearance of the surrounding area.
29. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision.
30. Whilst I have not been provided with a Conservation Area appraisal, I was able to observe on my site visit that the Conservation Area includes the historic core of the

village around Tower Hill, the High Street and Church Street, and includes the appeal site which is located east and northeast of the core of the village. I consider that the significance of the Conservation Area is derived from the mixture of traditional cottages and larger dwellings, as well as from the presence of listed buildings and memorial structures.

31. With regards to the appeal scheme, it is noted that the design and style of the proposed buildings would reflect and largely replicate the design and style of dwellings which were approved and constructed under the Original Scheme and, consequently, there would be no harm in this respect arising from the appeal proposal. As above, the increased density of housing at the appeal site would reflect the density of housing within the surrounding residential areas and within the Conservation Area. I therefore conclude that the appeal proposal would preserve the significance and setting of the Conservation Area and, through the completion of the site, would represent an enhancement.
32. For the reasons given above, I find that the appeal scheme would not have a harmful impact on the character and appearance of the area and would not be harmful to the significance or setting of the Conservation Area. The proposal would therefore comply with Policies NH1 and NH13 of the Local Plan, which aim to ensure that new development meets the highest standards of design, and that elements of the historic environment which contribute towards the unique identity of areas and help create a sense of place are sustained and, where appropriate, enhanced.

Other Matters

33. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
34. I have had regard to the presence of the nearby listed structures as identified by the Council and the need to give special attention to the desirability of preserving the setting of listed buildings. In this respect, I consider that the degree of separation between the identified listed buildings and the appeal scheme is sufficient that no harm to the significance or setting of the heritage assets would arise.
35. Interested parties raise several additional objections to the proposal including the potential impacts in relation to; drainage, highway safety, biodiversity, noise and disturbance during the construction phase and the lack of nearby services and facilities. Furthermore, I have had regard for the correspondence and submissions in respect of planning obligations relating to the Original Scheme and appeal scheme. These are all important matters and I have considered all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters which have been critical to my decision.

Conclusion

36. In summary of the above, whilst I have found that the appeal proposal would provide adequate parking provision, would not be harmful to the character and appearance of the surrounding area and would not be harmful to the character or appearance of the Conservation Area, I have found that the replacement play area would not provide a safe equivalent to that recreation facility that would be lost as

a result of the proposal.

37. I acknowledge that the appeal proposal would provide substantial benefits in terms of the additional housing units provided, the mixture of which better reflects identified local need, with further benefits arising from the enhancement of the Conservation Area by the completion of the development site and from the benefits that would arise from the performance of the Planning Obligation and its proposed modifications. I also recognise the position with regards to viability.
38. However, whilst I acknowledge the benefits associated with the appeal proposal are substantial, they would not, in my view, outweigh the harm that the proposed repositioning of the recreational facility would have in respect of the safety of its users, and the subsequent development plan policy conflict to which I have attached significant weight in the determination of this appeal.
39. For the reasons given above, I conclude that the appeal scheme conflicts with the development plan when taken as a whole. There are no material considerations that would lead me to reach a determination other than in accordance with the development plan. As such, the appeal should be dismissed.

A Spencer-Peet
INSPECTOR