



Appeal Decisions

Site visit made on 27 July and 8 September 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2021

Appeal A Ref: APP/W3330/X/21/3270204

Gabrieli, Greenway Lane, Lower Henlade, Taunton TA3 5NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Ravenor against Somerset West and Taunton Council.
 - The application Ref. 31/20/0023/LP is dated 25 August 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as "Construction of a garden building in the rear garden of Gabrieli to form a studio, garage, gym and hobbies room in line with the drawings submitted – 5448/P/RS2, 5448/P/RS3 & 5448/P/RS6 plus Planning Statement 5448PS.".
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Appeal B Ref: APP/W3330/X/21/3270205

Gabrieli, Greenway Lane, Lower Henlade, Taunton TA3 5NA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Ravenor against Somerset West and Taunton Council.
 - The application Ref. 31/20/0024/LP is dated 25 August 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is "Construction of a garden building in the rear garden of Gabrieli to form a studio, garage, gym and hobbies room in line with the drawings submitted – 5448/P/RS4, 5448/P/RS5 & 5448/P/RS6 plus Planning Statement 5448/PS-2.".
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Appeal C Ref: APP/W3330/W/21/3270176

Gabrieli, Lower Henlade, Taunton TA3 5NA

- 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 planning permission.
 - The appeal is made by Mr and Mrs Ravenor against the decision of Somerset West and Taunton Council.
 - The application Ref 31/20/0011, dated 14 April 2020.
 - The development proposed is described as "alteration of existing garage/studio to form one bedroomed annexe and construction of replacement garage/studio/gym and hobbies room."
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Decision – Appeal A

1. The appeal is dismissed.

Decision– Appeal B

2. The appeal is dismissed.

Decision– Appeal C

3. The appeal is dismissed insofar as it relates to “the construction of the proposed replacement of the garage/studio/gym and hobbies room” and planning permission is refused for the proposed replacement of “the garage/studio/gym and hobbies room”. The appeal is allowed insofar as it relates to “the alteration of existing garage/studio to form one bedroomed annexe” and planning permission is granted for “the alteration of existing garage/studio to form one bedroomed annexe” at Gabrieli, Lower Henlade, Taunton TA3 5NA in accordance with the terms of the application, Ref 31/20/0011, dated 14 April 2020, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: ‘5448/P/01’, ‘5448/P/03’ and ‘5448/P/04’.
 - 3) Prior to the development hereby permitted taking place, a scheme for “lighting design for bats” shall be submitted to and approved in writing by the Local Planning Authority. No external lighting shall be installed other than in accordance with the scheme as approved.

Preliminary Matters

4. I carried out an access required site visit on 27 July when I was allowed access to the site. However, I subsequently requested details of nearby Listed Buildings (LBs) as an issue had been raised by an interested party. Following the receipt of the details of the LBs and after both main parties had been given an opportunity to comment on any implications of the revised National Planning Policy Framework (the Framework), I carried out an unaccompanied site visit to further consider some of the matters raised by looking only from public land.
5. The development proposed within appeals A and B are alternative schemes for a similar outbuilding with a difference relating to internal dimensions.
6. Revised plans have been submitted in relation to the planning application being assessed in Appeal C. However, as the ‘Procedural Guide – Planning Appeals – England’ advises, if an applicant thinks that amending their application proposals will overcome the local planning authority’s reasons for refusal they should normally make a fresh planning application. If an appeal is made the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority and which were subject to public consultation. I will deal with the proposal on the basis of the plans that were originally submitted.

Appeals A) and B) - Main Issue

7. The Council has confirmed that had they determined these applications, they would have reached the view that neither of the alternative proposals would be 'permitted development' under the provisions of Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). The onus is upon the appellants to prove, on the balance of probabilities, that the development would be lawful, within the scope of those provisions.

Appeals A) and B) Reasons

8. The appeal site includes a dwelling and a 2-storey outbuilding which is described as a garage and studio. These are towards the front of the site, close to Greenway Lane. There is a single vehicular access between these existing buildings which leads up a steep sloped driveway towards the garden. The proposal is for a large outbuilding positioned to the rear of the garage and studio on what is presently part of the lawn.

Curtilage

9. The garden of the property is extensive. The LDCs propose alternative schemes for similarly designed buildings that would have the same purpose and which would have the same position within the site. The proposed position would be on an area of land that was at least partly previously in separate ownership. The Council has accepted within their representations, which includes reference to an LDC approved in 2020 for the "existing change of use of land to domestic garden". The GPDO conveys under class E, permitted development rights for various developments "within the curtilage of the dwellinghouse". The terms 'garden' and 'curtilage' are often confused but are not one and the same thing.
10. There is no definitive designation of what constitutes the 'curtilage' of a building. It is a matter of fact and degree coming about due to various legal authorities. It has been generally held that for land to fall within the curtilage of a building, it must be intimately associated with that building to support the conclusion that it forms part and parcel with it, although it is not necessarily the case that it must always be a small area. It is a matter for the decision maker to consider 3 relevant factors in the round. These are (i) the physical layout of the building (the dwellinghouse) and the land; (ii) ownership past and present; and (iii) use or function past and present.
11. In this case, all of the land within the current site where the building is proposed for construction, is closely associated with the dwelling in terms of present use as residential garden area and is also intimate with the dwelling given that it is overlooked by windows and a balcony. The location is on land that is in one enclosure with the dwelling. There is no dispute that this has been used for the present purposes connected with the occupants of the dwelling for around 40 years and that they have owned it for that length of time. I am satisfied, looking at this in the round as a matter of fact and degree, that the location of the buildings proposed in both applications (appeals A and B) would be within the curtilage of the dwellinghouse.

Physical dimensions and construction

12. The building proposed in appeal B would involve what appears on the

submitted plans to be a degree of digging into or levelling off of the land. This would be a minor levelling of the land and that as a matter of fact and degree would not be a separate engineering operation. Both proposals therefore show buildings that would be within the size limitations as set out within paragraph E.1. Even when a proposed building within the curtilage of a dwellinghouse would fit within the size limitations, it does not always follow that it would be permitted development. The proposed use for the building also needs to be within the scope of Class E.

Proposed Use

13. Class E grants permission for the provision within the curtilage of the dwellinghouse of (amongst other things) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Courts have held that the word "required" in this context should be interpreted to mean "reasonably required." It is for the appellant to show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse, as a dwellinghouse.
14. Class E at paragraph E.4 provides some advice about interpretation and refers to various activities for the "domestic needs or personal enjoyment of the occupants of the dwellinghouse". However, there is no definition within the GPDO of what "incidental" means and so the ordinary meaning of the word needs to be considered. The Concise Oxford Dictionary states that it is "casual" and "not essential (to)."
15. The appellant has referred me to the Emin¹ court authority. In that case, the Court endorsed the general approach of the Inspector (the case was remitted due to a conceded error on a different point). It was held that the size of the building when taken alone may not be determinative but can be a relevant consideration as it may represent some index of the nature and scale of the activities. The use cannot rest on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. Incidental as referred to in Emin means that there must be some element of subordination which is consistent with the dictionary definition. The evidence must demonstrate, on the balance of probabilities, that the proposed building is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
16. The proposed single-storey building would be 23.5m long and 11.5m wide. I have not been provided with comparisons of the ground floor areas with the other buildings on the site as has been done in some of the other appeal cases that have been referred to. However, this would be a substantial building which would not appear sub-ordinate within the site when compared to the size of the existing buildings. It would have the potential to be used at a significantly noticeable scale. However, it is necessary to look in the round at how it is intended to be used.
17. There would be 3 main rooms that are labelled 'studio', 'garage' and 'gym/hobbies'. On the northern side, closest to the dwelling there would be a pedestrian door leading into a lobby with a WC to the 'studio'. It is not unusual in my experience for a WC to be included within garden outbuildings even though the purpose is clearly for a primary human function. Taken alone I do

¹ Emin v SSE & Mid Sussex DC [1989] JPL 909

not consider that such provision would indicate that the building is intended for primary accommodation. However, the appellants do state that the new building is, at least in part, required to accommodate the same functions as the existing garage and studio. The existing first-floor studio has been used as an annexe for the appellants' daughter and also as a "guest suite" which are primary activities. Taken at face value this would indicate that the proposed studio may be intended for some guest accommodation and the nearby WC would assist in that. Such use would not be incidental to the use of the dwellinghouse.

18. Even if the 'studio' would be used only for music or other hobbies of the occupants of Gabrieli, the largest individual room within the proposed building is labelled for 'gym/hobbies'. This is imprecise indicating that there is no firm intended purpose. Whether it would be used as a gym and for hobbies or whether it would be an 'either/or' situation is not clear. This seems to me to be a variable or not entirely planned situation, possibly an "unrestrained whim", as was referred to in the Emin case. Furthermore, it is not explained why such a large room is required when other substantial rooms are also proposed. The big doors providing access to the 'gym/hobbies' room and the garage may enable use for housing a vintage tractor and agricultural machinery collection. However, I have been provided with no information to indicate the scale of that use which, particularly given the size of the building, could be more than simply casual or subordinate to the occupation of the dwellinghouse.
19. What is clear from the applications is that the primary reason for requiring the outbuilding, as well as replacing the existing studio space, is to enable the appellant's daughter and her husband to move to the site. These needs do not therefore arise, according to the supporting information, from the activities of the existing occupants of Gabrieli. Even if I were to allow the appeal for the works to the existing 'garage/studio' (Appeal C), which would make the residential occupation of that building more likely, those works would still need to be carried out at some point in the future. There may also be a number of other factors that could change the circumstances of the occupation of the site, affecting whether the annex is occupied as planned. Section 192(2) of the Act, states that a certificate should be issued if it is shown that a use would be lawful if instituted or begun "at the time of the application." In this case, the need for the outbuilding does not arise from the circumstances that existed at the time of the application but from what may happen in future. This in my view adds to further uncertainty about whether the proposed building would be used for purposes incidental to the occupation of Gabrieli.

Appeals A) and B) Conclusions

20. Other appeal decisions have been referred to and some details provided. I am not persuaded that my decision in this case is inconsistent with those other decisions made with respect to the specific circumstances in those cases. I have considered these appeals on the circumstances relevant in this case.
21. For the reasons given above I conclude that the Council's deemed refusals to grant a certificate of lawful use or development in respect of the construction of a garden building in the rear garden of Gabrieli to form a studio, garage, gym and hobbies room was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal C) Main Issues

22. The Council has confirmed that had it had the opportunity to determine the planning application, they would have refused it.

23. From the reasons given, I consider that the main issues are:

- Whether the proposal would be acceptable in principle in this location, taking account of the development plan and other material considerations;
- The effects upon the character and appearance of the site and surrounding area;
- The effects upon water and nutrient discharge; and
- The effects upon flood risk.

Appeal C) Reasons

Principle

24. The Council is concerned that the accommodation proposed within the annexe would be tantamount to the creation of a new dwelling. There is no dispute that a new dwelling in this location would not comply with policies SB1 of the Taunton Deane Adopted Site Allocations and Development Management Plan, December 2016 (DMP) and Policy SP1 of the Taunton Dean Borough Council, adopted Core Strategy 2011- 2028 (CS). However, that is not what is proposed as set out on the application submissions.

25. It is clear that the detached building that includes the existing garage and studio already contains facilities that can provide accommodation as it stands. Furthermore, the building has been used in that way with the appellants' relatives and some visitors having occupied the building as an annexe in the past. The proposal would involve the extension of the building to provide additional, more comfortable ancillary accommodation. However, although the facilities would enable a greater degree of independence from the main dwelling, that in itself does not mean that the proposal is tantamount to creating a new dwelling. It has been held that if such accommodation is provided to enable independent day-to-day living, it would not necessarily involve the creation of a separate planning unit from the main dwelling or therefore involve a material change in the use of the buildings and land. It is a matter of fact and degree to consider on a case by case basis.

26. The site is accessed via a single gateway from the road. The building proposed for conversion is close to the road and driveway. The existing garage doors would be replaced by windows and doors that would face towards the driveway and large windows within the side of the appellants' dwelling. The proposed balcony would overlook the immediate rear external space of the appellants' dwelling. Both buildings are within the curtilage of the dwellinghouse which has been assessed as such above within Appeal A and Appeal B. The buildings are intimately positioned with each other even though they are not physically joined together. No separation of individual plots is proposed and the site is intended to be occupied by the appellants' daughter. She has regular caring responsibilities to help the appellants and would live in the annexe with her own family. I am satisfied that if implemented as proposed, as a matter of fact and degree, the development would not involve the creation of a new planning

- unit or involve a material change of use if occupied in this way. If those circumstances were to change in future to the extent that a material change in the use of the land and building occurred, the Council could consider the expedience of enforcing against that, at that time.
27. DMP Policy D6, allows the conversion of appropriate buildings within the curtilage of dwellings for ancillary accommodation without requiring further assessment. However, the proposal does not involve a new act of conversion given that the building can currently be used for residential purposes, as an annexe. Furthermore, even if I were to consider it in that way, the works proposed, as a matter of fact and degree, do not amount to the erection of a new building and criteria A to E do not therefore require consideration.
 28. CS Policy DM2, relates to development within the countryside. Criteria 7 allows conversion of existing buildings and is relied upon by the Council. Again, the annexe is not caught by this criterion as the building is proposed for extension and alteration and not conversion.
 29. The proposed detached outbuilding does clearly propose primary living "accommodation". Whilst I have indicated with respect to appeals A and B, there is some ambiguity as to whether the 'studio' may be replacement ancillary accommodation, I have not considered this appeal on that basis. The proposal for planning permission does not propose "living space for relatives, often elderly" as referred to by paragraph 1.8.11 of the DMP. That sets the context for DMP Policy D6. As such, the outbuilding does not fall to be considered with respect to DMP Policy D6.
 30. With respect to this main issue, the proposal does not breach the policies referred to by the Council, namely DMP Policies SB1 and D6 and Policy SP1 of the CS. I will go on to consider whether the detail of how the whole development is proposed with respect to the other main issues.

Character and appearance

31. The appeal site is within an area that has a rural feel although the buildings which come in a range of styles from various eras, give the area a spacious, suburban quality. Gabrieli is a large dormer style bungalow within spacious grounds, set behind a block boundary wall. The large, 2-storey existing garage/studio is detached from the dwelling on the opposite side of the driveway and has a simple, modern design with a tiled pitched-roof, windows within the gable-end that face towards the dwelling and with rendered walls.
32. The rear (south) elevation of the garage/studio is proposed to be extended with a large pitched-roof dormer which would also have doors opening onto a balcony on the roof of the ground floor kitchen. The kitchen would adjoin a narrow perpendicular 2-storey addition with a pitched gable-roof. The roofs of these additions would be set down from the ridge of the original building and would be positioned on the southern, garden side of the site with only limited glimpses being possible from the road close to the northern side. It would be possible to see the extensions from the public footpath alongside the eastern boundary and from the neighbouring garden and dwelling on that side. The extensions would not dominate the appearance of the existing building and the resultant building would remain subservient in visual terms to the scale of the dwelling. These elements would not cause any substantial enclosure of the footpath nor the neighbouring garden.

33. The Council did not raise concerns regarding the setting of LBs but this has been raised by other interested parties. I have a statutory duty to have special regard to the desirability of preserving the setting of LBs². The 2 LBs in question are 'Musgrove Farmhouse', located near the junction of Stoke Road and Greenway Lane, and 'Potmans' which is further to the east within Stoke Road. Both of these buildings are located a substantial distance from the appeal site. The proposed position of the extensions to the garage/studio would have a very limited visual impact upon the street-scene nearby in Greenway Lane or the environment within which the LBs are experienced by their occupants or members of the public. I consider that this would not impact upon the significance of the LBs as designated heritage assets or their settings.
34. The proposed detached outbuilding would be further to the rear of the annexe and dwelling. It would take up a substantial amount of space and volume within the rear garden. This would be very noticeable from Greenway Lane and from the public footpath. The current spaciousness between the buildings on the appeal site and the adjoining dwelling would be severely compromised. That spaciousness is presently a distinctive characteristic of the area. The building would be of an industrial scale and although clad in timber which may soften to a small degree its starkness over time, it would remain a bulky and utilitarian structure. This would urbanise the appearance of the site when viewed from Greenway Lane, the nearby public footpath and neighbouring properties.
35. The plans propose to raise the hedge – but I have no evidence about how long it would take for the hedge to grow up to the height shown in order to have any significant screening effect. Furthermore, the long-term maintenance of a growing hedge would be difficult to ensure through the imposition of a planning condition and I do not consider that this or other landscaping would adequately address my concerns. A large amount of the garden would remain undeveloped and substantial distinctive trees as well as other landscaping, would be retained and could be adequately protected through the imposition of suitable planning conditions. However, overall the building would have a harmful urbanising impact upon the rural feel of the settlement. The building would not integrate satisfactorily with the street-scene.
36. I have also taken account of the effect the proposed detached building would have upon the settings of the LBs. Again, due to the distance of the site from these, this part of the proposal would have a neutral effect upon those buildings, preserving the settings of them. This however does not alter my view that the construction of this building would harm the character and appearance of the site and surrounding area. That part of the proposal would not comply with CS Policies DM1 and CP8 and DMP Policy D7 or the Framework.
37. The proposed alteration of existing garage/studio to form one bedroomed annexe would however not harm the character and appearance of the site and surrounding area. That part of the proposal would comply in these respects with CS Policies DM1 and CP8 and DMP Policy D7 and the Framework.

² The Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66(1)

Biodiversity - Somerset Levels and Moors RAMSAR site

38. There are washing and toilet facilities already within the existing annexe. Whilst these are proposed to be upgraded, no change of use of the building is proposed for reasons that I have explained above. The developments are proposed to be used by members of the appellants' family. The building as exists could, be used for the same purposes albeit in a less comfortable manner. The Council suggests that the proposal would require a Habitat Regulations Assessment but I do not agree that it would be necessary due to the nature of the proposal.
39. On the basis of the submitted evidence, I do not consider that it has been demonstrated that the proposal would lead to additional foul water discharge or therefore increased nutrient discharge (phosphates in particular) that would adversely impact upon the Somerset Levels and Moors Ramsar Site. In these respects, I can find no conflict with CS Policies C8 and DM1 or the advice of the Framework.

Flood risk

40. Given that no change of use is proposed, the flood risk vulnerability will not change as suggested by the Council which is their only concern in relation to this matter. With respect to this main issue, I do not consider that the development would lead to additional flood-risks and would not conflict in this respect with CS Policy C8 or the advice of the Framework.

Overall balance

41. I have the power under s79(1)(b) of the 1990 Act to split a decision on a s78 planning appeal, allowing one part of a scheme and dismissing the rest although am not obliged to do so. With respect to the above main issues, I consider that the alteration and extension of the garage/studio is acceptable but that the proposed outbuilding would not comply with development plan policies. These buildings are not connected physically to each other. I can therefore consider approving one part of the proposal and refusing the other.
42. The changes to the Framework as drawn to my attention by the appellants have not changed primary legislation. I am required, by s38(6) of the Planning and Compensation Act 1991, to make my decision in accordance with the development plan unless material considerations indicate otherwise. The individual personal circumstances of the appellants are capable of being other material considerations. However, the refusal of planning permission for the outbuilding would not prevent the appellants' family coming to live with them and is insufficient to outweigh the harm I have identified in relation to that part of the proposal. Furthermore, due to my decision in relation to Appeals A and B, the outbuilding as proposed would not be permitted development. It therefore does not form a clear fallback position of any significant weight in this decision.
43. Neither part of the proposal would adversely affect the living conditions of adjoining neighbours but this is a neutral matter neither weighing in favour nor against the unacceptable part of the proposal. I have also found that no part of the proposal would be unacceptable with respect to the third and fourth main issues but again, this neither weighs in favour or against the proposal.

44. Overall, I consider that the extension to the existing garage/studio is acceptable but there are no matters that collectively or individually outweigh the harm that I consider would be caused in relation to the second main issue, with respect to the proposed outbuilding.

Conditions

45. The Council has suggested the imposition of a number of conditions and I have considered these with respect to the tests set out in the Framework.
46. I agree that it is necessary in the interests of biodiversity to proceed with a cautious approach with respect to the effect of artificial lighting on bats. I have attached a condition that is simplified from that suggested. I have also included a condition requiring compliance with the submitted plans along with the standard time limit.
47. As explained above, a material change of use of the garage/studio is not proposed even though the internal facilities would be improved and the building extended. The Council would have control if the use was materially changed to a separate dwelling and it is therefore unnecessary to attach a condition as suggested, requiring that it is only occupied for ancillary purposes. The Council has not explained why any continuing 'permitted development' rights should be removed. Planning Practice Guidance confirms that such conditions may not pass the tests of reasonableness or necessity and that is the case here. The extension and alteration of the garage/studio in my view does not require further landscaping or the protection of existing landscaping, in order to be acceptable.

Appeal C) Conclusions

48. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Andy Harwood

INSPECTOR