



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

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.
-

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

¹ Appeal Ref APP/W3330/W/20/3245967

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.