



## Appeal Decision

Site Visit made on 9 February 2021

**by T Gethin BA (Hons), MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 March 2021**

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### **Appeal Ref: APP/X1118/D/20/3262368**

#### **Puffin, Meadowside, Ashford EX31 4BS**

- 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 David Lane against the decision of North Devon Council.
  - The application Ref 71526, dated 11 May 2020, was refused by notice dated 14 August 2020.
  - The development proposed is described as two storey side extension with conversion of attic space to ensuite bedroom.
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#### **Decision**

1. The appeal is allowed and planning permission is granted for two storey side extension with conversion of attic space in to an ensuite bedroom at Puffin, Meadowside, Ashford EX31 4BS in accordance with the terms of the application, Ref 71526, dated 11 May 2020, and subject to the conditions set out in the schedule to this decision.

#### **Application for costs**

2. An application for costs was made by Mr David Lane against North Devon Council. This application is the subject of a separate Decision.

#### **Background and Main Issue**

3. The Decision Notice originally issued by the Council refused planning permission for the proposed development but did not include any reasons for refusal. However, following the Council becoming aware of this, a corrected Decision Notice was issued containing the refusal reason set out in the Officer Report. Accordingly, I consider the main issue to be whether the appeal scheme would result in the loss of an affordable housing unit.

#### **Reasons**

4. The appeal site contains a three-bedroom dwelling. Approved under planning permission Ref 62848, the dwelling is defined as affordable housing secured as a Discounted Sale Unit by a section 106 legal agreement (s106 agreement). Amongst other aspects, the s106 agreement set an Initial Sale Price for the Discounted Sale Unit and a Discounted Price of 48% of market value on future sales of the dwelling. The s106 agreement also sets out occupation criteria and ensures that future purchasers will have to abide by its relevant requirements.
5. The proposed development would significantly increase the overall floorspace of the dwelling and, amongst other aspects, create an additional bedroom. The submitted evidence indicates that this would change the property's current open market value from approximately £258,500 to approximately £427,500. As per

the s106 agreement, the Discounted Price of the existing dwelling would therefore be £124,080 while the extended property would be £205,200. As well as expanding it to a four-bedroom property, the proposed development would clearly, therefore, increase the value of the dwelling significantly.

6. However, the submitted evidence does not indicate that the provisions in the s106 agreement would be affected or altered by the proposed development. Any future sale or disposal of the property would therefore continue to need to comply with, amongst other aspects, clause 5 of Schedule 1, which requires the unit to be sold/disposed of at the Discounted Price as defined within the s106. The occupation criteria of Schedule 2 would also remain. Accordingly, although the extended property would have a greater value, it would remain as a Discounted Sale Unit secured as affordable housing and available to eligible people with a connection to the local community of Ashford.
7. With any future sale of the Discounted Sale Unit being based on the Discounted Price, the extended property would therefore continue to be more affordable than were it to be sold on the open market. The proposed development would thus not mean that the property would not meet the definition of Affordable Housing in the s106 agreement of '...housing provided for persons who cannot afford to buy or rent dwellings generally available on the open market suitable to meet their needs and being Discounted Sale Units in accordance with the provisions of schedule 1'.
8. In coming to this view, I have taken into account the Council's Housing Officer calculation that the discounted sale price of the extended property would not be affordable on the basis of an affordability calculation of three times the current average annual working household income in the district and a 10% deposit. However, on the basis of that affordability calculation coming out at £95,544, neither the Initial Sale Price of the dwelling – as defined in the legal agreement – nor its current Discounted Sale Price value would be considered affordable.
9. The Council indicate that there is a greater need for three-bedroom than four-bedroom dwellings in North Devon. However, I have little substantive evidence before me that the significant affordable housing need in the locality relates only to three-bedroom houses and that there is no demand or need for four-bedroom affordable housing available as Discounted Sale Units. On the other hand, the appellant – who occupies the affordable house – has also set out his need for a larger unit. In addition, the policies that the Council allege the appeal scheme would conflict with do not require affordable housing to be of a particular size, either in terms of gross internal area or the number of bedrooms. Although the s106 agreement required details – including the size, number of bedrooms and tenure – of the Discounted Sale Unit to be set out in an Affordable Housing Scheme to be approved in writing by the Council, there is little evidence before me which indicates that the Discounted Sale Unit must remain unaltered, as per the details in the Affordable Housing Scheme. The legal agreement also does not itself define or restrict the size of the dwelling.
10. Consequently, although the creation of an additional bedroom and the significant increase in internal floorspace would increase the value of the dwelling, it would remain as an affordable Discounted Sale Unit and the submitted evidence does not indicate that the appeal scheme would conflict with the parameters of the s106 agreement, which would remain extant. I also

have little substantive evidence that a four-bedroom dwelling, available as an affordable home, would not meet an identified housing need.

11. For the above reasons, I conclude that the proposed development would not result in the loss of an affordable housing unit. I therefore find that it would not conflict with Policies ST17, ST18 and DM24 of the North Devon and Torrington Local Plan 2011-2031. Amongst other aspects, these: seek to deliver a balanced housing market which reflects identified local housing needs; require affordable housing to remain available to eligible households in perpetuity; and support local occupancy dwellings in rural settlements subject to certain requirements, including that dwellings remain available to meet the identified housing needs of the local community initially and in the long term. The proposal would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to delivering a sufficient supply of homes.

### **Other matters**

12. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters relating to drainage and utilities/services, construction hours, the privacy of adjoining occupiers including in relation to overlooking and the effect of the proposed development on boundary hedges. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Some of the matters put to me, such as hours of construction, are also commonly covered by other legislation while other issues, such as access to drains and utility services, are not planning matters. It is therefore neither necessary nor reasonable to impose conditions relating to either of these matters.

13. The Council considers that the appeal scheme would not harm the significance of the Ashford Conservation Area. Having considered the development and visited the site, I concur and find that the development would preserve the character and appearance of the designated heritage asset and its setting.

### **Conclusion and Conditions**

14. For the above reasons, the appeal is allowed.

15. In addition to the standard time limit condition, I have imposed a condition requiring the carrying out of the development in accordance with the approved plans in the interests of certainty. A condition requiring matching materials is necessary in the interests of the character and appearance of the area. Given the proximity of the proposed development to the adjoining property to the west, a condition requiring the first-floor window on the west elevation to be finished with opaque/obscure glazing is necessary in relation to the living conditions of adjoining occupiers. In the interests of ecology and biodiversity net gain, a condition requiring the provision of a bat box is also necessary.

*T Gethin*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan; Existing (Drawing No 001); Proposed extension (Drawing 002 Rev 1 dated 17/07/2020, received by the Council on 17 July 2020); and Site plan (Drawing No 003, received by the Council on 12 June 2020).
- 3) The external surfaces of the development hereby permitted shall match those used in the construction of the existing building.
- 4) The proposed first floor window on the west elevation shall be obscure glazed and fixed shut unless any opening part are sited more than 1.7 metres above the finished floor level of the room to which it is to serve, and shall be retained as such unless otherwise agreed in writing by the Local Planning Authority.
- 5) Prior to the approved extension being brought into use, a bat box shall be sited on the west elevation of the building (as detailed on approved Drawing No 002 Rev 1) and shall be retained thereafter.

## **END OF SCHEDULE**



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## Costs Decision

Site visit made on 9 February 2021

by **T Gethin BA (Hons), MSc, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

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### **Costs application in relation to Appeal Ref: APP/X1118/D/20/3262368 Puffin, Meadowside, Ashford EX31 4BS**

- 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 Mr David Lane for a full award of costs against North Devon District Council.
  - The appeal was against the refusal of planning permission for two storey side extension with conversion of attic space to ensuite bedroom.
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1. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The applicant considers that the Council acted unreasonably in both procedural and substantive terms by failing to adhere to the correct determination procedures for the planning application and failing to cooperate with the appellant to resolve matters.
2. Contrary to Article 35(1)(b) of Part 6 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), the Decision Notice for the planning application issued by the Council on 14 August 2020 did not include any reasons for refusal. Although the issuing of that Decision Notice without the refusal reason is said to have stemmed from a technical/clerical error, it was nevertheless unreasonable that full reasons for refusal were not included.
3. However, the Decision Notice was clear in that planning permission was refused. This was not the case with the Tunbridge Wells example put to me, which is thus not particularly relevant in this instance. The submitted evidence indicates that the Council and applicant discussed the proposed development during the Council's determination of the planning application, with for example the Council accepting additional information from the applicant in a positive manner, as per the National Planning Policy Framework. The Council also informed the applicant of their concerns with the proposal and their intention to refuse planning permission prior to determining the planning application. In addition, the Council's Officer Report, signed off on 14 August 2020, includes detailed information on the Council's position and the full reason for refusal which the Council subsequently included in its corrected Decision Notice.
4. The applicant cannot therefore have been uncertain as to whether or not planning permission had been refused, what the Council's concerns were with the planning application and whether there was the need for an appeal if they wished to pursue one. Whether or not the Council had the power to issue a corrected Decision Notice does not lead me to a different conclusion.

5. The submitted evidence indicates that after the Council became aware of the missing refusal reason, it took action to resolve the matter. Although not immediate, the response included issuing the corrected Decision Notice – containing the full refusal reason – within a reasonable time period. The Planning/Case Officer also responded to the applicant to confirm that the error had been resolved, suggested they enter into pre-application discussions to identify possible solutions to the Council’s concerns, and continued to liaise with the applicant including for example by providing the requested details regarding affordability. Despite the lack of advice from the Council’s legal department, it therefore cannot be said that the Council failed to engage with the applicant.
6. It has been put to me that the applicant had insufficient time to prepare/submit the appeal given the Council did not issue the corrected Decision Notice for several weeks and the corrected version included the date of the original. However, given my findings above, this does not lead me to a different conclusion.
7. The lack of full reasons for refusal on the original Decision Notice was unfortunate but also unreasonable. However, the original Decision Notice was clear that planning permission had been refused and the applicant was clearly aware of the Council’s concerns with the proposed development and had been informed of the proposed refusal reason before planning permission was formally refused. Other than the applicant engaging in the pre-application discussions suggested by the Council, there is also little substantive evidence before me which indicates that the appeal could have been avoided by, for example, the use of conditions or planning obligations. Accordingly, although I have come to a different overall conclusion to the Council and have allowed the appeal, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*T Gethin*

INSPECTOR