



## 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/20/3262321**

**Annexe, 39 John Smale Road, Sticklepath EX31 2HR**

- 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 Paul Mayne against the decision of North Devon Council.
  - The application Ref 71683, dated 22 June 2020, was refused by notice dated 17 August 2020.
  - The development proposed is described as proposed extension re-submission of withdrawn application no 71292.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are the effect of the proposed development on:
  - the character and appearance of the surrounding area;
  - protected species; and
  - the living conditions of adjoining occupiers, with particular regard to outlook from the garden of 40 John Smale Road.

### Reasons

#### *Character and appearance*

3. Forming part of a row of two-storey terraced properties, the appeal site contains a relatively narrow end-of-terrace property with a small two-storey rear projection. The site is bounded by a public access way to the side and the publicly accessible open area of parking to the rear. The site is therefore visible in public views while the locality has a relatively spacious character and the trees to the south provide a verdant backdrop. The surrounding area includes various properties in a mixture of ages, types and sizes. The host building's rear projection extends a short distance beyond the main two-storey building line of the terrace, and some of the other terraced properties have been extended with single-storey additions. Nevertheless, the site reads as relating most closely to the modest, well-proportioned terrace that it adjoins.
4. The proposed development would extend the rear projection significantly beyond the main two-storey building line of the terrace. It would therefore read as a prominent and unsympathetic addition that, due to its extent and mass, would dominate the host building and terrace, appear out of scale in relation to its surroundings and fail to respect its context. Given its position and size, it would erode the verdant backdrop and the locality's open character. Extending

the flank wall running along the site's southern boundary, the proposed development would also present an enclosing, dominating and blank feature to the adjacent public access way.

5. In coming to this view, I have taken into account the recent detached development of flats to the north-west and that the proposed extension would be at the rear of an end-of-terrace property and would extend the existing small rear projection with similar materials and roof form. Given the submitted evidence indicates that the single-storey metal structure on the site is unauthorised, its presence and lesser scale and footprint than the proposed development does also not lead me to a different conclusion.
6. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. I therefore find that it conflicts with Policies ST04, DM04 and DM25 of the North Devon and Torridge Local Plan 2011-2031 (NDTLP). Amongst other aspects, these require development of a high quality design that is appropriate and sympathetic to setting, responds to the characteristics of the site and respects its context and surroundings. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places.

#### Protected species

7. Amongst other aspects, NDTLP Policies ST14 and DM08 seek to conserve and protect the natural environment and biodiversity by ensuring that: all development takes into account the importance of habitats; impacts on protected species are avoided wherever possible; unavoidable adverse impacts are adequately and proportionately mitigated; and development contributes to net gain in biodiversity where possible.
8. The proposed development would involve works to the roof of the existing property. Although the submitted wildlife statement sets out that there was no evidence of bats etc from an inspection of the roof space, the report does not confirm when the survey was carried out and what methods were used. It is therefore not clear whether the survey was carried out at the right time of year using appropriate methods. Although the Council's wildlife trigger list indicates that a wildlife report must be produced by a consultant with suitable qualifications and experience, it is also not clear whether the person carrying out the survey was a suitably qualified ecologist/similar. Accordingly, I place limited weight on the findings of the wildlife statement.
9. I recognise that the building is of a relatively modern construction and it is said that, with concrete tiles and sealed soffits, there is no access to the roof for bats or other protected species. However, the submitted evidence does not sufficiently demonstrate that protected species are not present in the roof and it seems to me that the site is in area where bats and other species may be found, including for example the trees immediately to the south of the site and in the countryside and River Taw nearby. Accordingly, there is a reasonable likelihood that the development could harm protected species.
10. A biodiversity report was not requested by the Council at validation or during the determination of the application. However, this matter is not determinative as to the acceptability of the proposal and its effect on protected species. I have therefore considered it on its merits, based on the evidence before me.

11. The Planning Practice Guidance indicates that an ecological survey may be appropriate where, for example, protected species may be present. Government Circular 06/2005 (Biodiversity and Geological Conservation), referenced within the provisions in the Framework relating to habitats and biodiversity, sets out amongst other aspects that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development, is established before planning permission is granted. I am also mindful of the protection afforded to habitats and species by the Wildlife and Countryside Act 1981 (as amended), and that the Natural Environment and Rural Communities Act 2006 requires that public authorities must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. In addition, European protected species have full protection under The Conservation of Habitats and Species Regulations 2017.
12. For the above reasons, I conclude that the proposed development has the potential to harm protected species and no mitigation has been proposed. I therefore find that it conflicts with NDTLP Policies ST14 and DM08. The proposal would also be inconsistent with the provisions in the Framework relating to conserving and enhancing the natural environment.

#### *Living conditions*

13. Although the proposed extension would be relatively large, it would be separated from No 40 by the remaining garden area of No 39. Boundary treatment and the orientation of the terrace's rear gardens means that the main outlook from No 40 also generally extends towards the rear, in a westerly/north-westerly direction. Although the proposed development would reduce the feeling of openness and the presence of the trees to the south, its position off to the side means that it would not affect the main outlook from the garden of No 40. Given its set-back from the boundary with No 40 and the screening provided by the existing fence, the proposed extension would also not appear as an unacceptably dominating feature from No 40's garden. In coming to this view, I have taken into account the size of the extension and the extent of its blank rendered northern elevation.
14. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers, with particular regard to outlook from No 40's garden. I therefore find that it accords with NDTLP Policies DM01, DM04 and DM25 in relation to this issue. Amongst other aspects, these seek to ensure that the amenities of neighbouring occupiers are safeguarded and require development to have no significant adverse impact on them.

#### **Other matters**

15. My attention has been drawn to the various discussions between the main parties regarding the appellant's plans to extend the property, and that the proposed development was amended in light of the advice received from the Council. However, I have limited my considerations to the planning matters before me, and I have determined the appeal on the submitted evidence.
16. I recognise that the internal space of the existing accommodation on the site, which was created by the sub-division from No 39 and confirmed through a certificate of lawful development, may be relatively limited and the proposed extension would provide additional living space. In addition, neighbours have

not objected to the development, I have found that it would not harm the living conditions of adjoining occupiers, and it has been put to me that the appeal scheme would have no effect on parking or any outside amenity area. Be that as it may, these matters do not outweigh the harm I have identified nor provide justification for development that conflicts with the development plan.

**Conclusion**

17. For the above reasons, the appeal is dismissed.

*T Gethin*

INSPECTOR