

## Application Report

Planning, Housing and Health  
North Devon Council  
Lynton House, Commercial Road,  
Barnstaple, EX31 1DG

<b>Application No:</b>	76410
<b>Application Type:</b>	Full Application
<b>Application Expiry:</b>	15 February 2023
<b>Extension of Time Expiry:</b>	
<b>Publicity Expiry:</b>	19 January 2023
<b>Parish/Ward:</b>	FREMINGTON/FREMINGTON
<b>Location:</b>	8 Broadway Fremington Barnstaple Devon EX31 2NR
<b>Proposal:</b>	Extension & alterations to dwelling
<b>Agent:</b>	Woodward Smith Chartered Architects
<b>Applicant:</b>	Mr & Mrs Biederman
<b>Planning Case Officer:</b>	Miss C Roissetter
<b>Departure:</b>	N
<b>EIA Development:</b>	
<b>EIA Conclusion:</b>	Development is outside the scope of the Regulations.
<b>Decision Level/Reason for Report to Committee (If Applicable):</b>	Committee – applicant is a Councillor

### Introduction

Councillor Biederman (and his wife) (the **Applicants**) applied to the Council for planning permission for an extension and alterations to his home address which was given reference 76410 (the subject of this planning application).

The Applicants' application, submitted via an agent, clearly indicated that Cllr Biederman is an acting Councillor at the Council.

Following a consultation process, which concluded on 19 January 2023, the Council issued a decision notice on 14 February 2023, through its officers acting under delegated powers, approving the Applicants' planning application.

A complaint was made by a member of the public on 20 February 2023 that the Council had not made its decision appropriately. Enquiries were then made which, following enquiries with the relevant officers at the Council, showed that:

- The Council's planning officer took a decision, on 14 February 2023, to approve the Applicants' planning application under the delegated powers she was nominated to hold in common with the Head of Planning, Housing and Health in paras. 2.4 and 5.25 of Annex 2 to Part 3 of the Council's Constitution

- The Council's Constitution expressly excludes (in paragraph 5.25(a)(iv)) from such delegated powers an application submitted by a Member, such as Cllr Biederman (or his partner). Therefore, the Council's planning officer should not have determined the Applicants' planning application and this should have been taken to the Council's Planning Committee for a decision.

It appears that the decision was made by the planning officer who simply missed the fact that the Applicants had set out that they came into the category of Councillor and spouse/partner. There is absolutely no suggestion that the applicant or the agent has made an error, nor did the applicant request the application to be determined under delegated powers. It is an unfortunate error on the Council's part which must be remedied and hence an application for judicial review has sought that the officer's decision be quashed.

This planning application is needs to be re-determined by Planning Committee. At the date of this report the previous decision has not yet been quashed and this is before the Administrative Court to decide. Please note, Planning Committee is not bound by the officer decision and is free to take whatever decision it thinks fit. It is important for the Committee to be aware however that, if the previous officer decision has not been quashed by the date that this is considered by the Committee, there cannot be two decisions on the planning register because that would allow the Applicants to implement whichever one they chose (assuming there was a redetermination in the applicants' favour). Consequently, (again if the decision has not been quashed by the date of the Committee) the decision of the Committee will need to record that it cannot be issued until the earlier decision has been quashed and that it will have to be reported to the Committee on a later date if that does not happen.

### **Site Description**

8 Broadway is a semi-detached dwelling located in small cul-du-sac to the south of Mill Hill in Fremington. The site is located within the development boundary and is situated within a Critical Drainage area. The site is adjoined by 10 Broadway on the west, and is neighboured by 12 Broady Strap to the north and 6 Broadway to the east.



Front elevation of dwelling



Rear elevation of dwelling



Garden view to the west



Garden view to the east

### **Recommendation**

#### **Approved**

Legal Agreement Required: No

### **Planning History**

<b>Reference Number</b>	<b>Proposal</b>	<b>Decision</b>	<b>Decision Date</b>
<b>71278</b>	Extension to dormer windows at 8 & 10 Broadway Fremington Barnstaple Devon EX31 2N	Approved	8 July 2020

### **Constraints/Planning Policy**

<b>Constraint / Local Plan Policy</b>	<b>Distance (Metres)</b>
Advert Control Area Area of Special Advert Control	Within constraint
Burrington Radar Safeguard Area consultation required for: All buildings, structures, erections & works exceeding 45 metres in height.	Within constraint
Chivenor Safeguard Zone Consultation Structure or works exceeding 15.2m	Within constraint
Critical Drainage Area	Within constraint
Land is potentially contaminated with:Electrical Sub Station Facilities	11.12
Landscape Character is: 3A Upper Farmed & Wooded Valley Slopes	Within constraint
USRN: 27500701 Road Class:R Ownership: Highway Authority	4.43
Within adopted Development Boundary: Fremington Development Boundary ST07	Within constraint
Within Adopted Unesco Biosphere Transition (ST14)	Within constraint
Within Braunton Burrows Zone of Influence	Within constraint

<b>Constraint / Local Plan Policy</b>	<b>Distance (Metres)</b>
Within:, SSSI 500M Buffer in North Devon,consider need for AQIA if proposal is for anaerobic digester without combustion plant	Within constraint
Within:, SSSI 5KM Buffer in North Devon,consider need for AQIA if proposal is for anaerobic digester without combustion plant	Within constraint
Within:Braunton Burrows, SAC 10KM Buffer if agricultural development consider need for AQIA	Within constraint
SSSI Impact Risk Consultation Area	Within constraint
DM01 - Amenity Considerations DM04 - Design Principles DM05 - Highways DM06 - Parking Provision DM08 - Biodiversity and Geodiversity DM25 - Residential Extensions and Ancillary Development ST06 - Spatial Development Strategy for Northern Devon's Strategic and Main Centres ST14 - Enhancing Environmental Assets	

### **Consultees**

<b>Name</b>	<b>Comment</b>
Councillor F Biederman	Councillor is the Applicant
Councillor J Mackie	no comments received
Fremington Parish Council	24/01/2023 - It was resolved, with no votes to the contrary, to recommend APPROVAL.
Sustainability Officer	3/01/2023 - No comment

### **Neighbours / Interested Parties**

<b>Comments</b>	<b>No Objection</b>	<b>Object</b>	<b>Petition</b>	<b>No. Signatures</b>
0.00	0.00	0.00	0.00	0.00

No representations received

### **Considerations**

#### **Proposal Description**

This application seeks detailed planning permission for the erection of an extension and alterations to the dwelling, as well as the erection of a garden structure, all to the rear of the dwelling.

The proposal includes a rear extension to the existing dining room to measure 3.5m by 2.0m with vertical timber boarding elevations, an aluminium bifold door opening out into the garden and a flat epdm flat roof at a height of 2.6m.

The side extension to the dwellinghouse would adjoin to the existing side porch to provide an office/study room and would measure 2.6m by 1.8m also with vertical timber boarding elevations and a flat epdm roof measuring 2.4m in height.

The new garden structure would provide a covered outdoor seating area as well as a proposed outdoor bar area. The structure would be partially open on the west and south elevations and would measure approximately 1.9m by 4.0m by 3.4m by 1.0m. The structure would also be finished with vertical timber boarding elevations and a flat epdm roof measuring 2.6m in height.

The roofs of the proposed rear extension and garden structure would also include the addition of timber batons extending approximately 0.8m from the roofs to form a pergola for outdoor seating in the garden. The existing patio area would also be extended to accommodate the new garden structure.

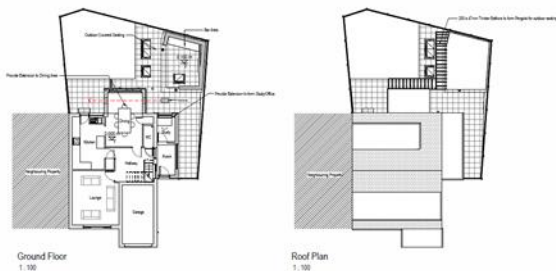
The proposal also includes alterations to the existing side porch which includes partially cladding the porch elevations with the same vertical timber boarding as the extensions but would retain part of the existing stonework walls at a low level of 0.8m.



Location plan



Block plan



Proposed floor plan



Proposed elevations

## **Planning Considerations Summary**

- Principle of Development
- Design
- Amenity
- Ecology
- Flood Risk and Drainage
- Highways and Parking

## **Planning Considerations**

In the determination of a planning application Section 38 of the Planning & Compulsory Purchase Act 2004 is relevant. It states that for the purpose of any determination to be made under the planning Acts, the determination is to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan for this area includes the Devon Waste Plan and North Devon and Torridge Local Plan. The relevant Policies are detailed above.

The National Planning Policy Framework (NPPF) is a material consideration.

## **Principle of Development**

The proposed development is located within Fremington, Barnstaple therefore, Policy ST06 (Spatial Development Strategy for Northern Devon's Strategic and Main Centres) of the North Devon and Torridge Local Plan (NDTLP) is relevant, which supports within the development boundary subject to its strategic hierarchy.

Policy DM25 (Residential Extensions and Ancillary Development) of the NDTLP supports the development of residential extension to a dwelling and other ancillary development where:

- (a) the form, scale, setting and design of the proposal respecting existing development, its context, setting and surroundings;*
- (b) adequate residential amenity space and parking provision being maintained; and*
- (c) there being no significant adverse impact on the amenity of the occupants of neighbouring properties.*

The proposed development is for a single storey side extension to the rear and east of the main dwelling as well as the erection of a small ancillary structure in the rear garden. The proposal is considered appropriate for, and proportionate to, the original dwelling and compliant with Policies ST06 and DM25 of the NDTLP.

## **Design**

Policy DM04 (Design Principles) of the NDTLP requires development to be appropriate and sympathetic to setting in terms of scale, density, massing, height, layout appearance, fenestration, materials and relationship to buildings and landscape features in the local neighbourhood.

The proposed development includes the erection of a single storey extensions to the rear (north) and side (east) elevations of the dwellinghouse as well alterations to the rear of the dwellinghouse with the erection of an ancillary structure in the rear garden.

The proposed rear extension to the dwelling seeks to extend the existing dining room and would measure 3.5m by 2.0m with a height of 2.6m. The proposed side extension if for the creation of a small office/study and would measure 2.6m by 1.8m with a height of 2.4m the

rear extension. The new garden structure would provide a covered outdoor seating area as well as a proposed outdoor bar area. The structure would be partially open on the west and south elevations and would measure approximately 1.9m by 4.0m by 3.4m by 1.0m.

The proposed extensions and garden structure would be finished with vertical timber boarding, a flat epdm roof, upvc and aluminium windows, and upvc and aluminium doors. The rear extension and new garden structure would be joined along the roofs by timber batons that would extend from the roof approximately 0.8 and would form an 'L' shape for a pergola for outdoor seating and the patio in the garden would also be extended to accommodate the new garden structure. The proposal also includes alterations to the existing side porch which includes partially cladding the porch with the same vertical timber boarding as the extensions but would retain part of the existing stonework to a low level of 0.8m.

The proposed development would be well screened from neighboured properties and the local residential area by the existing privacy fence around the property that would be retained through the proposed scheme. The existing dwelling is not considered to be of significant architectural merit and the quality of the appearance and materials for the proposed development are considered to be good in quality. The proposed extension is not considered to adversely impact on the character of the existing dwelling and is not considered to impact on the character of the street scene.

The proposed development is considered acceptable in scale and appearance for the character of the existing dwelling, and is considered to be in compliance with Policy DM04 of the NDTLP.

### **Amenity**

Policy DM01 (Amenity Considerations) of the NDTLP states development will be supported where it would not significantly harm the amenities of any neighbouring occupiers or uses; and the intended occupants of the proposed development would not be harmed as a result of existing or allocated uses.

No representations have been received. The site is adjoined by 10 Broadway on the west, and is neighboured by 12 Broady Strap to the north and 6 Broadway to the east. The proposed development would not result in any overlooking or overbearing implications on neighbouring properties, and as such the development is not considered to impact on the amenity of the intended users or neighbours, in compliance with Policy DM01 of the NDTLP.

### **Ecology**

Local Planning Authorities have a statutory duty to ensure that the impact of development on wildlife is fully considered during the determination of a planning application under the Wildlife and Countryside Act 1981 (as amended), Natural Environment and Rural Communities Act 2006, The Conservation of Habitats and Species Regulations 2017 (Habitats Regulations 2017).

Policy DM08 (Biodiversity and Geodiversity) of the NDTLP requires development should conserve, protect and, where possible, enhance biodiversity and geodiversity interests and soils commensurate with their status and giving appropriate weight to their importance.

Policy ST14 (Enhancing Environmental Assets) of the NDTLP aims to protect and enhance northern Devon's natural environment by ensuring that development contributes to providing a net gain in biodiversity where possible.

Given the information received, the proposed development would not impact on any protected species or their habitats. A biodiversity net-gain would be required for the site through the installation of a bird and bat box on the proposed structure. Therefore, the proposal is considered to comply with Policies DM08 and ST14 of the NDTLP.

### **Flood Risk and Drainage**

The site is located within a Flood Zone 1 but is located within a Critical Drainage Area. Therefore, flooding is not considered as a constraint but surface water drainage is a constraint.

A Critical Drainage Statement has been submitted in support of the application as the site is located within a Critical Drainage Area. The proposed development includes the inclusion of an additional soakaway to serve the extension and as such, the proposed development is considered to appropriately mitigate any increase on the surface water drainage for the site.

### **Highways and Parking**

Policy DM05 (Highways) of the NDTLP states all development must ensure safe and well-designed vehicular access and egress, adequate parking and layouts which consider the needs and accessibility of all highway users.

Policy DM06 (Parking Provision) of the NDTLP requires development proposals to provide an appropriate scale and range of parking provision to meet anticipated needs.

The proposed development would not result in any impact on the safety or function of the local road network and the proposal would not impact on the parking provisions for the in accordance with DM05 and DM06

### **Conclusion**

The application is considered to accord with the adopted development plan. Approval of the application is therefore recommended subject to the imposition of planning conditions.

### **Human Rights Act 1998**

The provisions of the Human Rights Act and principles contained in the Convention on Human Rights have been taken into account in reaching the recommendation contained in this report. The articles/protocols identified below were considered of particular relevance:

- Article 8 – Right to Respect for Private and Family Life
- THE FIRST PROTOCOL – Article 1: Protection of Property

Section 149(1) of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it (the Public Sector Equality Duty or 'PSED'). There are no equality implications anticipated as a result of this decision.

### **Recommendation**

**Approved – Subject to the previously issued permission being quashed by the court**



Legal Agreement Required: No

### **Conditions**

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.

Reason :

The time limit condition is imposed in order to comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans/details:  
B603 22 201 Location And Block Plan received on the 21/12/22  
B603 22 301B Floors And Elevations received on the 10/02/23  
(‘the approved plans’).

Reason:

To ensure the development is carried out in accordance with the approved plans in the interests of proper planning.

3. The development hereby approved shall be constructed in accordance with the following schedule of external finishing materials:  
Roof - epdm roofing  
Walls - stonework and larch vertical boarding  
Windows – upvc  
Doors - aluminium  
Pergola - timber

Reason:

In the interests of the appearance of the development and locality in accordance with Policy DM04 of the North Devon and Torridge Local Plan.

4. Prior to the building hereby approved being brought into first use, bat and bird boxes shall be sited on either the south or west elevation of the building hereby approved and shall be maintained and retained thereafter.

Reason:

To achieve net gains in biodiversity in compliance with Policies DM08 and ST14 of the North Devon and Torridge Local Plan and paragraph 174 of the National Planning Policy Framework.

### **Informatives**

1. As the proposed works affect / are in close proximity to the boundary with a neighbouring property, this decision does not convey any other form of consent or agreement that may be necessary in conjunction with these works and does not override or supersede any civil rights, which the neighbour may have. The attention of the applicant is drawn to the information contained in the Guide to the Party Wall etc. Act 1996 booklet. Copies available from the Communities and Local Government website [www.communities.gov.uk/publications/planningandbuilding/partywall](http://www.communities.gov.uk/publications/planningandbuilding/partywall).
2. Statement of Engagement

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has imposed planning conditions to enable the grant of planning permission.