

Appeal Decision

Site visit made on 17 January 2017

by R J Jackson BA MPhil DMS MRTPI MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 January 2017

Appeal Ref: APP/Q3115/D/16/3163285

The Manor, Weston Road, Lewknor, Watlington OX49 5RU

- 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 Carroll against the decision of South Oxfordshire District Council.
 - The application Ref P16/S2404/FUL, dated 15 August 2016, was refused by notice dated 14 October 2016.
 - The development proposed is construction of an annexe within the curtilage of The Manor.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on:
 - the Lewknor Conservation Area (the LCA), including the effect on protected trees; and
 - the setting of The Manor, a Grade II listed building, and on the asserted curtilage listed wall.

Reasons

Conservation area

3. The appeal site is the whole of area of The Manor. However, the area for the proposed building (the proposal site) is located adjacent to Weston Road within an enclosed area. Three sides are formed by low walls, either brick or brick and flint, and the fourth by the road with a low post and wire fence with some small amount of vegetation. There is an existing gate in the southern wall through to the main area around The Manor. The proposal site is set back from the carriageway by a ditch and is at slightly higher level than the road. The proposal site has on it and surrounding it, a number of trees which add beneficially to the appearance and thus the character of the area. These are protected as the site lies within the LCA.
 4. To the immediate east of the proposal site is a farmyard. Set slightly back from the road, although at a different angle due to a slight bend in Weston Road, is a flint and brick finished building. This would appear to have two storeys as there is a small window high up in the end elevation looking over the
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- appeal site. This flint and brick building and an open area to the south lie within the LCA, although the remaining buildings in the farmyard lie outside.
5. The appellant and Council dispute the use of the proposed building. The appellant indicates that it would be used as ancillary accommodation to The Manor, but the Council considers that it would be tantamount to the construction of a new dwelling in the countryside. In my view deciding whether it would be tantamount to the construction of a new dwelling or represent ancillary accommodation should be based on an objective analysis based on the peculiar features of the case.
 6. The proposed building, which is smaller than The Manor, would have all the necessary accommodation for independent day-to-day living, having bedrooms, living room, a kitchen, en suite bathrooms and a study. It would also be located in a separate, distinct area with its own access, although this would be to some extent joint with The Manor, and would have its own parking area. The physical separation from The Manor would be emphasised by the existing two storey garage with accommodation above, between the proposed building and The Manor. This reduces the visible connection significantly so that it would appear as an independent structure. Rather than relating to the main house in visual terms it would relate to the flint and brick building to the east on the adjoining landholding. Taking these factors together I conclude, as a matter of fact and degree, that the proposal would represent a separate dwelling.
 7. The Council has suggested, on a without prejudice basis in the event that the appeal is allowed, a condition that the building only be used as ancillary accommodation. However, given the nature of the building and its location I am of the view that the effect of any permission would be to create a separate dwelling, and that any later application to remove such a condition would likely succeed. As such limiting the use by means of condition would not be reasonable and it would not meet the tests for conditions set out in the National Planning Policy Framework (the Framework) or the national Planning Practice Guidance.
 8. The parties agree that the appeal site is located in the countryside outside the settlement of Lewknor. Policy CSR1 of the South Oxfordshire Core Strategy (the SOCS) indicates that outside locations listed in the policy new housing will not be permitted. This is in line with paragraph 55 of the Framework which indicates that new isolated homes in the countryside should be avoided unless there are special circumstances. The appellant has not indicated that there are any such circumstances.
 9. The proposed building would be located close to the northern boundary of the appeal site. The application form indicates that the building would be clad in feather edge weather boarding with a clay tile roof, which would be similar to the garage building. However, I have found the proposed building would relate more to the flint and brick finished building to the east. This building has a blank elevation facing Weston Road and to that extent the two buildings would address the highway in a similar way and the northern elevations would be of similar length. Overall, I conclude that the design of the building, of itself, would not be out of keeping with the appearance of the LCA.
 10. However, the introduction of a dwelling on the appeal site through the building, access and associated hardstandings, along with the normal domestic

paraphernalia, would harmfully urbanise this rural part of the LCA, a designated heritage asset, thereby harming its significance.

11. In support of the application the appellant submitted a Tree Report with Arboricultural Method Statements (the TRAMS). This looked at the trees in the area of the proposed building and purported to classify them in accordance with British Standard 5837:2012 'Trees in relation to design, demolition and construction – Recommendations' (the BS). This indicated that seven trees would be felled and an eighth either felled or pollarded.
12. The BS sets out four categories for trees ranging from 'A' for trees of high quality, through 'B' for those of medium quality and 'C' for those of low quality, to 'U'. Category U trees are defined¹ as "those in such a condition that they cannot realistically be retained in the context of current land use for longer than 10 years". Thus it is the current condition of the tree and the current use of the land rather than any effects of proposed development which lead to the classification. In addition trees in categories A to C should then be qualified under one or more of three subcategories (1, 2, 3) which are intended to reflect arboricultural and landscape qualities and cultural values, respectively². None of the trees categorised as A, B, or C in the Tree Report has been given a sub-category, and the life expectancy criterion for any tree in category U is given as less than 15 years rather than 10 years as set out in the BS.
13. All of the trees to be felled or pollarded are classified in the Tree Report under category U. Some of these (T4, T10, T11, T13, T15 and T20) have been given life expectancies of less than 15 years, but two trees T17, a sycamore, and T21, a horse chestnut, have life expectancies of greater than 20 years. These two trees either have scars or evidence of decay and the report recommends further testing for this but in both cases conclude "Fell for development". These two trees are both cited as being 25 m tall, being described respectively as "Major Specimen" and "Good dominant tree on edge of group". It would therefore appear that the categorisation has more to do with the proposed development rather than the current land use and tree condition. I am therefore not satisfied that on the basis of the evidence in front of me that the TRAMS has been undertaken fully in accordance with the BS and that there are appropriate arboricultural reasons to fell the trees. Their loss would be harmful to the character and appearance of this part of the LCA.
14. The BS notes³ "the default position should be that structures are located outside [the Root Protection Areas] the RPAs of trees to be retained". The proposed development would result in building within the RPAs and as such would increase the risk to health and longevity of the trees increasing the likelihood of their loss. This means that within the constraints of the site the development would be harmful to the character and appearance of the LCA and would not display a high standard of design in that it fails to take appropriate account of the constraint of trees.
15. Therefore the proposal would be harmful to the character and appearance of the LCA. Given the special attention that has to be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area

¹ Table 1 of the BS

² Paragraph 4.5.3

³ Paragraph 5.3.1

as set out in legislation⁴, this harm weighs substantially against the proposal, although in the terms of the Framework this would represent less than substantial harm to the significance of the LCA.

16. Paragraph 134 of the Framework indicates that where a development proposal will lead to less than substantial harm this harm should be weighed against the public benefits. No public benefits have been put forward in support of the appeal.
17. That being the case the proposal would be harmful to the LCA. As such it would be contrary to with Policies CSR1, CSEN1 and CSEN3 of the SOCS as set out above and which seek to protect the district's distinct landscape character, and that heritage assets will be conserved for their historic significance and their important contribution to local distinctiveness, character and sense of place. It would also be contrary to Policies G2, C4, C9, H13 and CON7 of the South Oxfordshire Local Plan 2011 (the SOLP) which indicates that the district's countryside will be protected from adverse developments, that development which would damage the attractive landscape setting of the settlements of the district will not be permitted, that development that would cause the loss of landscape features will not be permitted where those features make an important contribution to the local scene, that planning permission will not be granted for development which would harm the character or appearance of a conservation area, or for development which would be tantamount to the creation of a separate dwelling. It would also be contrary to paragraphs 55 and 131 of the Framework as set out above, and that new development should sustain and enhance the significance of heritage assets.

Listed building and wall

18. Although within the grounds of The Manor, as I have found that the proposed building would be visually and functionally separate from The Manor, it also follows that due to these factors the proposed building would have no effect on the setting of The Manor as a Grade II listed building. As such the setting of the listed building would be preserved.
19. The Council is also concerned about the potential effect on the walls surrounding the proposed building which it describes as "likely to be curtilage listed to the main house". This appeal is not the forum to determine whether the wall is within the curtilage of The Manor and although not fixed to the building, forms part of the land and has done so since before 1 July 1948. Given I am dismissing the appeal for other reasons the wall and its current setting would be preserved.
20. The proposed development would therefore preserve the setting of The Manor as a listed building. The proposal would therefore comply in that regard with Policy CSEN3 of the SOCS as set above and Policy CON5 of the SOLP which indicates that proposals for development which would adversely affect the setting of a listed building will be refused.

⁴ Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

Conclusion

21. For the reasons given above I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR