The Planning Inspectorate

Appeal Decision

Site visit made on 22 March 2017

by K E Down MA(Oxon) MSc MRTPI MRSB

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

Decision date: 30 March 2017

Appeal Ref: APP/J1860/D/17/3167122
"Hill Orchard", Lulsley, Worcestershire, WR6 5QP

- 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 John Nosworthy against the decision of Malvern Hills District Council.
- The application Ref 16/00624/HOU, dated 1 April 2016, was refused by notice dated 1 November 2016.
- The development proposed is construction of a treehouse to accommodate home office.

Decision

1. The appeal is dismissed.

Procedural matter

2. The appellant has submitted a number of sworn statements relating to the use of the appeal site. A section 78 appeal is not an appropriate vehicle for establishing the lawful use of land and this is therefore not a matter over which I have any jurisdiction. I have determined the appeal on its merits and in the context of the Development Plan and national planning policy set out in the National Planning Policy Framework (NPPF).

Main Issues

3. There are four main issues. Firstly, the effect of the proposed building on the character and appearance of the surrounding rural area, including the Malvern Hills Area of Outstanding Natural Beauty (AONB); secondly, the effect of the proposed development on ancient woodland; thirdly, the effect of the proposed development on a Special Wildlife Site and protected species; and fourthly, whether the proposed building is tantamount to a dwelling in the open countryside and, if it is, its effect on sustainable development objectives.

Reasons

Character and appearance

4. The appeal site lies within the substantial, informal garden of "Hill Orchard", a large detached dwelling located at one end of the plot. The property is set well back from the public highway and is accessed via a long driveway. The property

is on elevated land which falls away from the dwelling which occupies the highest part of the site. The location has a woodland setting, is secluded, tranquil and unspoilt and lies within the Malvern Hills AONB. The site lies adjacent to Ravenshill Wood, a nature reserve, Special Wildlife Site and area of ancient woodland, to which it provides enhancement.

5. The proposed building would be located on sloping ground in a wooded part of the site, approximately 40m from the dwelling and close to the boundary with Ravenshill Wood which is marked by a post and wire fence. The building would be some 12m long and about 4m wide with a large area of decking to one side. The end of the building closest to the dwelling would be just above existing ground level. The building and decking would extend out over the lower ground, elevated on a timber frame. The building would have a maximum height of some 7m above ground level. It would be mainly timber clad with large window and door openings and a metal profile sheet roof. It would be used as a home office.

6. The NPPF advises in paragraph 109 that the planning system should contribute to and enhance the natural environment by protecting valued landscapes. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in AONBs which, together with National Parks and The Broads, have the highest status of protection in relation to landscape and scenic beauty. Although not readily visible from the public highway or public rights of way, the proposed building, owing to its size, elevated design and distance of separation from the dwelling and adjacent outbuildings would introduce a substantial and intrusive level of built development into an open and unspoilt part of the AONB which would be harmful to the undeveloped, rural nature of the area. The fact that the building would not readily be seen from public viewpoints does not mitigate this harm. Moreover, it would be clearly visible from Ravenshill Wood nature reserve which appears from the evidence to be open to visitors.

7. Its presence would therefore lead to significant harm to the landscape and scenic beauty of the AONB. This would not only be contrary to paragraphs 109 and 115 of the NPPF but would also conflict with Policies SWDP 21, SWDP 23 and SWDP 25 of the South Worcestershire Development Plan (SWDP), adopted 2016, which taken together expect development in AONBs to conserve and enhance the special qualities of the landscape and integrate with the character and landscape setting through scale, height and massing that is appropriate to the setting and the landscape character.

8. It is therefore concluded on the first main issue that the proposed building would have a materially harmful effect on the character and appearance of the surrounding rural area, including the Malvern Hills AONB. For this reason alone the appeal should fail.

Ancient woodland

9. The appeal site lies among large trees which converge with the woodland canopy of the adjacent Ravenshill Wood nature reserve which comprises semi-natural ancient woodland. The appellant disputes that the site comprises ancient woodland but in any case, as stated in the submitted Arboricultural Report, it is a valuable addition and asset to the nature reserve.

10. The Arboricultural report recommends the felling of a number of trees but these appear to be poor specimens which might be recommended for removal in any case. The report concludes that there would be no material harm to trees during the construction process, subject to appropriate protection of defined Root Protection Areas (RPA) and appropriate working methods, including the use of no dig, minimal dig and hand dig only techniques. Although the submitted Arboricultural Report lacks clarity in places, I agree with the conclusion that subject to careful construction methods, there need be no material harm to trees. Protection could be secured through suitable planning conditions requiring a detailed and precise Arboricultural Method Statement, including tree protection measures, prior to the commencement of development.

11. It is concluded on the second main issue that the proposed development would not result in material harm to ancient woodland. In consequence there would be no conflict with Policy SWDP 22 which resists development that would result in the loss or deterioration of an Ancient Woodland.

Special Wildlife Site and protected species

12. The appellant has submitted with the appeal a Phase 1/Preliminary Ecological Appraisal Survey which was carried out in December 2016, following the refusal of planning permission. The survey has a number of limitations, including the poor time of year for surveying a number of protected species and the fact that no attempt was made to augment the survey with data from the Biological Records Centre. Therefore whilst the survey identified no signs of protected species, other than of bird nesting, it is not sufficiently robust for reliance to be placed upon it that protected species are absent from the site.

13. In view of the proximity of a designated nature reserve and Special Wildlife Site and the likely presence of protected species in the surrounding area I am not satisfied that the evidence is sufficient to assess adequately the potential impact of the proposed development on protected species. This is the case both during the construction phase and in the longer term when lighting, in particular, in and around the building could have an adverse effect on protected species such as bats and birds.

14. It is concluded on the third main issue that it has not been demonstrated that the proposed development would have no materially harmful effect on the adjacent Special Wildlife Site or on protected species. In consequence the proposed development would conflict with Policy SWDP 22 of the SWDP and paragraph 118 of the NPPF which taken together resist development that would result in significant harm to biodiversity or the loss or deterioration of a protected species.

Whether the proposed building amounts to a dwelling in the open countryside

15. Due to the location and size of the proposed building the Council considers that it is tantamount to a dwelling. No further evidence is provided to support this view. The appellant makes clear in his application and appeal that the building would be used as a home office, ancillary to the dwelling known as "Hill Orchard". The building would comprise two large rooms and a shower room with W.C. The submitted plans do not indicate any kitchen facilities.

16. Although the building would be large enough to be used as a dwelling, the description of development is clear and I am not persuaded that, simply because it is located some distance from the main house and is large, it is reasonable to make the assumption, unsupported by any other evidence, that the building is synonymous with a dwelling and should be assessed as such. A dwelling would raise issues other than size and siting that would not apply to an ancillary building, hence new dwellings are restricted in the open countryside other than in particular circumstances. In this case, a planning condition could be used to restrict the use of the building to that ancillary to "Hill Orchard" which would provide a mechanism to ensure that a new dwelling was not created in the future.

17. It is concluded on the fourth main issue that there is no persuasive evidence to support the view that the proposed building would be tantamount to a dwelling in the open countryside. In consequence there would be no conflict with Policies SWDP 1 and SWDP 2 of the SWDP or paragraph 55 of the NFFP which, taken together, seek to ensure that new housing in rural areas meets sustainable development objectives.

Other matters

18. Turning to other matters, the appellant's agent raises a number of criticisms relating to the Council's handling of the application. However, whilst there was a delay in determining the application and the appellant was not aware of all of the Council's concerns until the refusal notice, including the reasons for refusal, was received this would not amount to a justification to allow a development that would result in material harm as identified above.

Conclusions

19. Although I find that no harm would occur to ancient woodland or to sustainable development objectives, this does not alter or outweigh the harm identified to the character and appearance of the rural area, including the Malvern Hills AONB, or the potential harm to biodiversity, including protected species.

20. For the reasons set out above and having regard to all other matters raised, including the representations of the Parish Council of Alfrick and Lulsley, I conclude that the appeal should be dismissed.

K E Down
INSPECTOR