
Appeal Decision

Site visit made on 28 February 2017

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 31st March 2017

Appeal Ref: APP/W0530/W/16/3164666

**The Annexe 11A Church Close, Cottenham, Cambridge, Cambridgeshire
CB24 8SL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Timothy Baynes against the decision of South Cambridgeshire District Council.
 - The application Ref: S/0582/16/FL, dated 1 March 2016, was refused by notice dated 11 July 2016.
 - The application sought planning permission for conversion of a barn into an annexe and garage without complying with a condition attached to planning permission Ref: S/0332/02/F, dated 24 April 2002.
 - The condition in dispute is No 6 which states that: Upon implementation of this planning permission, the annexe shall not thereafter be used or occupied other than as part of the dwelling at No 11A Church Close (and never as separate accommodation). The occupation shall be restricted to members of the family occupying No 11A Church Close only.
 - The reason given for the condition is: To prevent a separate residential use with inadequate amenity area and appropriate on-site car parking space.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of a barn into an annexe and garage at The Annexe 11A Church Close, Cottenham, Cambridge, Cambridgeshire CB24 8SL in accordance with application Ref: S/0582/16/FL made on the 1 March 2016 without compliance with condition number 6 previously imposed on planning permission Ref: S/0332/02/F dated 24 April 2002, but subject to the conditions in the attached schedule.

Procedural matter

2. The decision notice issued by the Council described the proposal as 'Creation of independent dwelling'. Whilst this would be the outcome, the planning application sought to remove condition 6 of planning permission Reference S/0332/02/F. It was therefore an application pursuant to Section 73 of the Town and Country Planning Act 1990 (as amended) to develop land without compliance with a condition subject to which a previous planning permission was granted. In this case the condition is one which specifies that The Annexe cannot be used as a separate dwelling and can only be occupied by members of the family occupying No 11A Church Close. The development granted by
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planning permission Reference S/0332/02/F has been carried out and I was able to see this when I visited the site.

3. The reason given for condition 6 is to prevent a separate residential use with inadequate amenity area and appropriate on-site car parking space. From the planning officer's report and the Council's statement of case it is clear that this is intended to mean that the condition is to prevent the creation of a separate dwelling house with an inadequate amenity area and insufficient on-site parking space. I have dealt with the appeal on this basis.

Main Issues

4. Notwithstanding the reference to amenity space in the reason for the condition, the reasons for refusal relate to the adequacy of the vehicular access in relation to highway safety, and to the effect of parked vehicles on the character and appearance of the Conservation Area and the setting of a nearby Listed Building.
5. The main issues in this appeal are therefore:
 - Whether the condition is necessary to preserve the character and appearance of the Cottenham Conservation Area and the setting of All Saints Church; and
 - Whether the condition is necessary in the interests of highway safety.

Reasons

6. The appeal site comprises two buildings, 11A Church Close, which is part of a two storey, brick built house that has previously been subdivided into two dwellings and The Annexe, a two storey, timber boarded, outbuilding within the garden of this property that has been converted to a residential use and has had a single storey sun-lounge and store room added to it.
7. Section 66 of Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses. In addition, Section 72 of the same Act requires that in making decisions on planning applications and appeals within a conservation area, special attention is paid to the desirability of preserving or enhancing the character and appearance of the area. Paragraph 132 of the Framework also requires that great weight should be given to the conservation of heritage assets.
8. The proposal does not involve any new building works and the annexe building already exists. This is situated to the rear of the house at number 11a Church Lane and the Council recognise that The Annexe cannot be seen from either All Saints Church or the publically accessible part of Church Close. The Council's concerns in relation to the effect of the proposal on the setting of the listed building and the character and appearance of the conservation area stem solely from additional car parking demand arising from the severance of The Annexe from the main house.
9. There are no parking restrictions on Church Close or in the surrounding area. I saw when I visited the site that whilst the available on-street parking in Church

Close and Church Lane was well used, there were parking spaces available and there was a turnover in parking space use during the time that I was there. Due to the built form of the conservation area, with buildings generally set at the back of the footway or with very short front garden areas, on-street parking of cars is prevalent throughout the conservation area. I also saw that some, but not all, of the houses in Church Close and on Church Lane have off-street parking provision.

10. The submitted plans do not indicate any off street parking provision, although there is vehicular access to the rear of number 11a and space within the curtilage where vehicles could be accommodated. The Council do not set out what the car parking requirement for the resulting two dwellings would be. I note that the Council states that Policy TR/2 of the South Cambridgeshire Local Development Framework Development Control Policies Development Plan Document 2007 (DCP) sets a maximum car parking figure to reduce over-reliance on private cars and to promote more sustainable forms of transport. There is no minimum standard for car parking.
11. There are bus stops within a short distance of the appeal site and within the village there is a range of shops and facilities which could be accessed on foot or by cycle. There are also a number of businesses and a small industrial estate within the village and, consequently, the occupiers of the two resulting properties would not necessarily be dependent on the private car to access shops, facilities and employment opportunities.
12. The proposal would not increase the potential maximum occupancy of the resulting two dwelling houses over and above that which could occur with the two buildings being used as a single dwelling unit. In the light of this, it does not necessarily follow that the proposal would increase the number of vehicles using or visiting the site. If any increase were to occur, it would be very small.
13. The appellant currently has access to two off-street parking places nearby within the cul-de-sac, and a letter has been submitted by the owner of the land which states that these would remain available. There is however, nothing that would indicate that this is anything other than an informal arrangement. This notwithstanding, an additional two vehicles parked on the highway in the vicinity of the appeal site would not materially alter the appearance of the area which is currently has a substantial amount of on-street parking.
14. No evidence has been submitted in respect of the significance of the conservation area or the setting of the church and how this would be harmed by additional car parking. The setting of the Listed church is such that there are highways on three sides of the churchyard and a significant amount of car parking occurs adjacent to the churchyard wall at present.
15. Within this context and in the absence of any substantive evidence in respect of the number of vehicles that would potentially be generated by the resulting development, I do not find the Councils argument that the proposal would result in a significant increase in demand for parking in the area a compelling one. Even given the limited availability of on-street parking in the area, a very slight increase in the number of parked vehicles would not alter the intrinsic character and appearance of the area or the setting of All Saints Church, which is already heavily and widely used for car parking. Thus, the effect on the setting of the listed building and on the conservation area would be a neutral

one. This would preserve both the setting of the listed church and the character and appearance of the conservation area.

16. I therefore find that the development would not cause harm to the character and appearance of the Cottenham Conservation Area and the setting of All Saints Church. It would comply with the relevant requirements of Policies CH/4 and CH/5 of the DCP which seek to ensure that development would not adversely affect the curtilage or wider setting of a listed building and would preserve or enhance the character and appearance of conservation areas.

Highway Safety

17. Church Close is a narrow cul-de-sac serving approximately 12 properties. Part of the carriageway is marked out as parking bays in white paint, which has the effect of reducing the carriageway width to the extent that only one vehicle can pass along it at any time. It has no footways, and the front doors of the houses at numbers 11-15 open directly onto the carriageway. There is an existing access to the rear of number 11a, between 11a and number 12 Church Close.
18. The Highway Authority states that the access to the site would require a 2.4 by 43 metres visibility splay and a minimum access width of 5 metres. Due to the built form of the street this cannot be achieved. However, although this visibility requirement is taken from the Manual for Streets 2007, this is for roads with a design speed of 30 miles per hour. Whilst no traffic speed data has been provided by either party, due to the restricted width of Church Close, its short length, the road geometry and the fact that houses are accessed directly from the carriageway, I consider that it is extremely unlikely that this speed could ever be achieved and that actual vehicle speeds will be significantly less than this.
19. The Planning Officer's report suggests that the existing access has a width of 2.8 metres, whilst the Highway Authority suggests it is 3.5 metres wide. From what I saw on my site visit, Highway Authority's dimension is more accurate. Whilst this is less than the 5 metres width sought by the Highway Authority to enable two vehicles to pass, the access is, in effect, a private drive and not a road which would be expected to carry large numbers of vehicles. I also note that the appellant has stated that he has used the access for 20 years and, additionally, no accident data has been provided to indicate that the existing configuration of the access is unsafe.
20. As Church Close does not have footways, pedestrians using it are obliged to walk on the carriageway and motorists using the road would be aware of this. Similarly, the access to the rear of number 11 is not concealed from the view of pedestrians. Church Close is a cul-de-sac serving only a small number of properties and, as a consequence of this, the number of pedestrians walking on the carriageway will be low. As a result of the configuration of the access track and the existing restricted visibility from it, any vehicles emerging from it would not be doing so at high speeds. In these circumstances, despite the restricted visibility, I consider that there would be adequate time for pedestrians and drivers to react to each other's presence. Whilst the proposal may result in a slight increase in the number of vehicles using the access, due to the relatively small size of both resulting properties and that fact that the potential maximum occupancy would be unchanged, this would not significantly

exceed the potential number of vehicle movements from the use of number 11a and the Annexe as a single dwelling unit.

21. Within this context, the requirements of the Highway Authority are, in my opinion, excessive and do not reflect the particular circumstances of the surroundings of the appeal site.
22. I therefore conclude that the development would not cause harm to highway safety in the vicinity of the appeal site. It would comply with the relevant requirements of Policy DP/3 of the DCP which seeks to ensure, among other matters, that development proposals provide appropriate access from the highway network and do not compromise safety.

Other matters

23. Whilst the reason for Condition 6 of planning permission reference S/0332/02/F refers to the prevention of the creation of a separate dwelling with inadequate outdoor amenity space, the Council do not dispute that the present garden area at the appeal building exceeds the area that would be required to provide each of the dwellings that would be created with adequate outdoor amenity space. Although the submitted drawings do not show how the area would be subdivided, this is a matter of detail that could be addressed through a planning condition.
24. The Council has drawn my attention to an appeal decision in respect of the use of an annexe as a separate dwelling at 66 Abbey Road, Ickleton. However, no details of that case have been provided and so I cannot be certain that the circumstances are the same as the appeal before me. In any event, I have decided the appeal on its own merits.
25. The Council states that it does not have a five year supply of deliverable housing sites. It also recognises that the units that would be created by the proposal are of a type where the greatest shortage exists. This represents a benefit that would arise from the proposal and weighs in its favour.

Conditions

26. I have had regard to the conditions that have been suggested by the Council. As the development has already been carried out, it is not necessary to attach a condition in respect of the time period for the commencement of the development. In order to provide certainty as to what has been granted planning permission, I have attached a condition specifying the approved drawings. Although the appeal site is sufficiently large to provide the required private amenity areas for both dwellings, the subdivision into separate curtilages is not indicated on the submitted drawings and it is therefore necessary to attach a condition requiring these details to be submitted for approval.
27. Although not specifically mentioned by the Council, Planning Permission Reference S/03332/02/F contains a number of other conditions that are still operative. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Condition 2 of that the original permission concerned submission of details of the proposed materials and as the development has already been carried out it is not necessary to re-impose

that condition. Conditions 3, 4 and 5 removed certain permitted development rights and prevented certain other alterations to the property, which are on-going restrictions and, therefore, it is necessary to re-impose those conditions. I have reworded conditions 3 and 4 to refer to the current version of the Town and Country General Permitted Development Order.

Conclusion

28. I have found that the proposed development would not cause harm to the character and appearance of the Cottenham Conservation Area or to the setting of the Listed Building of All Saints Church. I have also found that the proposed development would not cause harm to highway safety in the area. For the above reasons, and having regard to all other matters raised, I conclude that the condition 6 of planning permission Reference S/0332/02/F is not necessary and that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: CC/TB/01/1 and site plan dated 10 March 2016.
- 2) Prior to the independent use of the annexe details of a private amenity garden area shall be submitted to, and approved in writing by, the local planning authority. Such a garden amenity space shall be constructed and laid out in accordance with those plans and be available for use prior to occupation.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within any Class of Part 1 of Schedule 2 shall be carried out in respect of the property and each unit thereon unless expressly authorised by a planning permission granted by the Local Planning Authority.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows shall be inserted constructed in the rear north eastern elevation.
- 5) The first floor windows in the south west elevation of the development hereby permitted shall be fitted, and permanently maintained, with obscured or opaque glass.