

Appeal Decision

Site visit made on 31 May 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 15 June 2017

Appeal Ref: APP/D3315/W/17/3168514

Applebrook House, Lydeard Down Hill, Lydeard St Lawrence, Taunton TA4 3SB

- 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 Maurice Hartnell against the decision of Taunton Deane Borough Council.
 - The application Ref 22/16/0017, dated 17 July 2016, was refused by notice dated 26 September 2016.
 - The development proposed is change of use from orchard in agricultural use to domestic use for adjoining property.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Taunton Deane Site Allocations and Development Management Plan (DMP) was adopted in December 2016.

Application for Costs

3. An application for costs was made by Mr Maurice Hartnell against Taunton Deane Borough Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the Lydeard St Lawrence Conservation Area.

Reasons

Character and appearance of the Conservation Area

5. The appeal site has been used as an orchard and it is partly occupied by a number of fruit trees. The orchard adjoins the rear garden of Applebrook House and the gardens of neighbouring residential properties. To the north and east, the orchard boundaries are largely formed of mature hedges and planting, beyond which is land forming part of the wider open countryside interspersed by farm buildings. A stream flanked by mature trees on the opposite bank forms the southern boundary with a residential property (Court Farm Barn). To my mind, taking account of all of these factors, the orchard clearly lies beyond the more built-up part of the village and it is closely related in its appearance to the adjoining land in countryside uses.
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6. The Conservation Area (CA) is mainly made up of buildings of traditional appearance and materials, arranged in rows adjacent to the principal road through the village. Along with the relatively modern Applebrook House, the orchard is situated in the CA. The paddock immediately to the north of the orchard is identified in the Council's Conservation Area Appraisal (CAA) as green space. The green space contributes to a softer, less built-up setting to this part of the village.
7. The proposed domestic use of the orchard would be likely to result in it having a more manicured appearance in the short term, notably as a result of the regular maintenance normally associated with the use of land as a garden. Moreover, the orchard would be likely to obtain a more domesticated appearance over the medium term. This would principally occur as the occupiers add ornamental features such as planting beds and ponds, pathways and patios are constructed and items of garden furniture such as chairs and tables are placed on the land. Domestic use may also lead to pressure to remove the trees and/or boundary hedges, as the occupiers sought to minimise shaded areas and maximise the enjoyment of their garden. Over time this would be likely to erode the orchard's tree cover, which is identified in the CAA.
8. As a result, the more domesticated appearance of the orchard would appear as an alien feature, entirely at odds with the more rural appearance of the land to the north and east and it would appear as a residential intrusion into the countryside. Whilst it has been suggested that the orchard has not been used for agriculture for some years and that it might become neglected in future, those matters do not justify the harm described above.
9. I accept that due to the local topography and the boundary hedges, the orchard is open to limited public views. However, the orchard tree cover is recognised as an attribute of the CA in the CAA and it can be experienced as part of the village setting in views from the adjacent green space. Therefore, in my view the orchard makes a significant contribution to the setting of this part of the village. Whilst the orchard is not identified as green space in the CAA, this cannot be taken to mean that it does not make a meaningful contribution to the character and appearance of the CA. The orchard is not entirely secluded, as there are at least some views over it from the rear elevations and gardens of adjacent housing. Moreover, the availability of limited views would by itself not be a good reason for allowing the proposal to go ahead as it could be repeated too often, thus undermining the character and appearance of the CA.
10. Removing permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 would enable a measure of planning control to be exercised in respect of proposals for future outbuildings in the orchard. Even so, it would not prevent the harm identified above. Consequently, imposing the suggested condition would not make the proposal acceptable.
11. A condition which imposed an obligation on the occupiers to maintain the existing trees and replant them where necessary in perpetuity would be an unduly onerous requirement and may exceed the protection already afforded to trees in the CA. Consequently, I am not persuaded that such a condition would pass the test of reasonableness in paragraph 206 of the National Planning Policy Framework (the Framework).

12. I fully appreciate that the appellant wishes to continue to manage the trees and that he does not intend to make any physical changes to the orchard. I have been given no reason to doubt the appellant's intentions. Even so, planning permission runs with the land. Future occupiers may not wish to manage the orchard in the same sympathetic manner as the appellant. Consequently, I have to afford the appellant's intentions limited weight in determining this appeal.
13. Accordingly, the proposal would cause unacceptable harm to the character and appearance of the CA. Therefore, the proposal would not accord with Policy CP8 of the adopted Taunton Deane Core Strategy (CS), as it would not conserve and enhance the natural and historic environment. The proposal would also not accord with criterion in CS Policy DM1, as it would unacceptably harm the appearance and character of the village.
14. The orchard is outside of the settlement boundary in the DMP. CS Policy DM2 is permissive of various uses in the countryside outside of settlements. In my view, the way in which the policy is worded means that it is not necessarily restrictive of other uses in the countryside outside of those specified. Even so, the policy requires all development to meet a number of tests, including not creating a residential curtilage which would harm the rural character of the area. This test is analogous to the proposal and it would result in the harm that Policy DM2 seeks to avoid. Consequently, the proposal would fail to accord with Policy DM2. Moreover, the proposal would not accord with DMP Policy ENV1, as it would not minimise the impact on the orchard.

Planning balance

15. The harm caused to the CA would be 'less than substantial' as meant by paragraph 134 of the Framework. However, the benefits of the proposal would largely be private and in favour of the appellant. There would be no public benefits arising from the proposal that would outweigh the harm to the CA.

Conclusion

16. The proposal would cause unacceptable harm to the character and appearance of the CA and it would not accord with the Development Plan. Therefore, I conclude that the appeal should be dismissed.

Stephen Hawkins

INSPECTOR