
Appeal Decision

Hearing held on 6 June 2017

Site visit made on 6 June 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 22 June 2017

Appeal A: APP/C3105/C/16/3157378

Appeal B: APP/C3105/C/16/3157380

Withycombe Barn, Wigginton Heath, Banbury, OX15 5HH

- **Appeal A** is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Mrs Paula MacPherson against an enforcement notice issued by Cherwell District Council.
 - The notice was issued on 20 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a self-contained residential unit at first floor level of the existing building, including the alteration of the roof of the existing building.
 - The requirements of the notice are:
 - (1) Remove from the land the unauthorised development, namely the self-contained residential unit at first floor level of the existing building;
 - (2) Remove from the land all materials (including building materials), equipment, installations, and constructions brought onto the land in connection with the unauthorised development on the land;
 - (3) Replace the existing roof of the existing building with a roof matching the previous roof, using materials that appear to match the materials of the previous roof exact.
 - The period for compliance with the requirements is 112 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
 - **Appeal B** is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Mrs Paula MacPherson against the decision of Cherwell District Council.
 - The application Ref 16/00626/F, dated 31 March 2016, was refused by notice dated 16 June 2016
 - The development proposed is the erection of a 1 bed self-contained annex above existing store rooms.
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Decision: Appeal A

1. It is directed that the enforcement notice be corrected in Section 3 by deleting the words "self-contained residential unit" and their substitution instead with the words "1 bed self-contained annex".
 2. Subject to the correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the erection of a 1 bed self-contained
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annex at first floor level of the existing building, including the alteration of the roof of the existing building, at Withycombe Barn, Wigginton Heath, Banbury, OX15 5HH, subject to the following conditions:

1. The development shall hereafter be retained as a 1 bed self-contained first floor annex in accordance with the plans and details submitted with planning application 16/00626/F: application forms, site location plan, site layout plan, site sewer layout plan and floor plan drawing.
 2. The first floor annex shall not be used other than as ancillary accommodation to the residential use of Withycombe Barn and shall be occupied solely by members of the household of the principal dwelling (Withycombe Barn) or their dependents.
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Decision: Appeal B

3. The appeal is allowed and planning permission is granted for the erection of a 1 bed self-contained annex above existing store rooms at Withycombe Barn, Wigginton Heath, Banbury, OX15 5HH in accordance with the terms of the application Ref 16/00626/F, dated 31 March 2016, subject to the following conditions:
 1. The development shall hereafter be retained as a 1 bed self-contained first floor annex in accordance with the plans and details submitted with planning application 16/00626/F: application forms, site location plan, site layout plan, site sewer layout plan and floor plan drawing.
 2. The first floor annex shall not be used other than as ancillary accommodation to the residential use of Withycombe Barn and shall be occupied solely by members of the household of the principal dwelling (Withycombe Barn) or their dependents
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Preliminary Matters

4. The breach of planning control as drafted is worded differently at Section 3 of the enforcement notice (Appeal A) to that described as the development for which planning permission is sought in Appeal B. However, the parties confirmed at the Hearing that the development in both cases is the same, and that for the purposes of clarity the description of the breach of planning control should be corrected to reflect that position.
5. I have therefore corrected the notice accordingly using the powers available to me under Section 176(1)(a) of the Act. I am satisfied that no injustice would result to either party in doing so.
6. That being the case I will deal with appeals A and B together.

Appeals A and B

Main issues

7. The two main issues are whether the proposed development would constitute an ancillary annex or a separate dwelling, and the effect of the development on the character and appearance of the area.
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Reasons

Whether an ancillary annex or a separate dwelling

8. The Council considers the proposal is tantamount to the creation of a separate dwelling in the countryside. In support of that contention the Council highlights the 20 metre separation distance of the annex from the main dwelling, the potential for sub-division of the plot with a separate access, and that the annex possesses all the facilities necessary for separate day to day living such that it could be occupied and function independently.
9. Given the layout and range of facilities available within the annex, I agree with the Council that it has the potential to be a separate dwelling house. Also, although the potential to create a separate dwelling is not dependent upon a separate vehicular access, I saw during my visit to the appeal site that it would be possible to sub-divide the curtilage and, albeit with some difficulty, provide a separate access.
10. However, notwithstanding the above, the application submitted to the Council was not for a separate dwelling. The application form confirms it is for a *1 bed self-contained annex*, and that no new residential units were proposed to be created¹. In support of the appeal the appellant states that the annex would only be used by a family member, and that it would have no separate postal address or its own individual supply of utilities. There is no contrary evidence or any other reason for me to doubt that that would be the case.
11. Additionally, although the extended building is part two storey, it nonetheless remains contextually small relative to the size of the substantial family dwelling, and is located close to the boundary tucked into the corner of the site. Overall, I consider that its design and appearance retains an appropriate scale and appearance as a minor curtilage building to the main dwelling. Given all of these factors I consider it unlikely that it would ever be an attractive proposition to anyone as an independent separate dwelling. Moreover, if any future application was submitted for it to become a separate dwelling house it would need to be tested against prevailing local and national planning policies at that time.
12. As such, I consider on the balance of all the evidence before me that the Council's fears over future pressure for it to become a separate dwelling are unwarranted in this particular case.
13. It is argued by the Council that the annex could have been more appropriately located within or attached to the main dwelling, but that such potential options have not been explored. Against that it is argued for the appellant that other options, including accommodating the current occupier² of the annex within the house, were not viable for several reasons, but that in any event the extension of the outbuilding adds no greater footprint, re-uses an existing building and is more environmentally sustainable overall as the optimal position on the site.
14. However, notwithstanding these opposing arguments, there is no national or local planning policy requirement that the location of a proposed annex, should be within or attached to the main dwelling for the purposes of determining

¹ Submitted planning application form, question 17

² The appellant's brother

whether or not it would be ancillary. I return to the location of the annex with regard to its effect on the character and appearance of the area below.

15. The Council is also concerned that a planning condition requiring the annex to remain ancillary would be difficult to monitor. However, such a condition is widely used and forms part of national planning guidance. I acknowledge that it may be more difficult to monitor than other types of planning conditions, but that does not equate to it being unenforceable. As such, there is no convincing reason for me to take the view that such a condition does not meet the standard tests for planning conditions set out at paragraph 206 of the National Planning Policy Framework (2012).
16. Subject to the imposition of a condition restricting the use of the annex as ancillary accommodation to the residential use of the main house, I conclude on this first main issue that the annex would be ancillary and would not constitute a separate residential dwelling. As such, there would be no conflict with Policy H.18 of the Cherwell Local Plan (1996) (LP) which seeks to prevent the creation of new dwellings in the countryside other than in exceptional circumstances.

Character and appearance

17. The annex is a first floor extension to an existing outbuilding such that the resulting building is approximately 5.4 metres maximum ridge height and is now part single and part two storey. It sits in the north-west corner of the site bounded by fields to the west, mature trees to the rear and within a wider landscape of falling land levels from north to south. It is mainly timber clad with blue/grey metal double glazed window units, and a galvanised steel roof with a dark blue vinyl sealant material to match the existing single storey roof.
18. At the time of my visit to the appeal site and the surrounding area I saw that the building was not visible from the adopted or commonly used footpath routes to the north-west. During winter months when there is less foliage the building may be partly visible but any public views would be from some considerable distance away.
19. The main dwelling house is formed from the conversion of a barn and other redundant farm buildings, built mainly in stone and red brick with a dark grey flat tiled roof. It occupies a large and extended footprint across half the width of the site, with secondary rear north-south projections at either end. These rear projections, and their roof lines, step down from the main part of the house reflecting the falling land levels. The nearest of these to the annex is at the western end. It has first floor south facing windows centrally positioned under the ridge line in the gable end.
20. The extended annex building, as I have previously described, is small in the context of the substantial size and spread of the main dwelling house. To some degree I accept the Council's point that it displays a mix of both agricultural and commercial/office type characteristics. However, its north-south orientation, step down in levels, south facing first floor windows under the gable end, roof pitch, elevation proportions, and simple eaves and window detailing echo the secondary form and detailing of the western projection of the main house I have described above.

21. Also, its contextual scale with the main dwelling, timber clad construction, roof material and colours also assist in clearly identifying it overall as a minor (secondary) residential outbuilding to the main house. It does not in my view result in an inappropriate intrusion into the wider landscape setting.
22. To conclude on this second main issue; I find that the resultant building in terms of its siting, design, materials and appearance is appropriate and compatible with the residential character and appearance of the main dwelling house, the wider site, and its rural setting. As such, there would be no material conflict with LP Policy CS28, and Policies ESD 13 and ESDF15 of the Cherwell Local Plan (2015) which, taken together, seek to prevent development that is inconsistent with local character in terms of siting, layout, design and appearance.

Conclusion

23. For all the above reasons I conclude that Appeal A should succeed on ground (a) and that the enforcement notice should be quashed.
24. I consider it is necessary to impose two conditions on the planning permission granted under the deemed application. These are to ensure the first floor annex is occupied and retained as ancillary accommodation in accordance with the existing layout and submitted details.
25. I conclude that Appeal B should also be allowed for the same reasons and subject to the same conditions.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rebecca Lock MRTPI MRICS
Mrs Paula MacPherson

Associate Planner, Fisher German LLP
The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Robert Neville

Cherwell District Council

INTERESTED PERSONS:

Martin Cherry

Neighbour

DOCUMENTS SUBMITTED AT THE HEARING

1. Closing Statement on behalf of the Appellant