



Appeal Decision

Site visit made on 11 June 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/P1133/D/19/3227231

Ross Hi, Aboveaway, Exminster EX6 8DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Farrow against the decision of Teignbridge District Council.
 - The application Ref 18/02584/FUL, dated 15 January 2019, was refused by notice dated 4 March 2019.
 - The development proposed is described on the application form as the 'conversion of a garage and store to domestic accommodation ancillary to the dwelling. External materials to be the same as existing'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Application Ref 18/02584/FUL follows unsuccessful application Ref 18/00357, which the Council describe as similar aside from 'very minor cosmetic alterations'. Nevertheless each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise.
3. The principal plan before me is No 1769-02 and in this instance the development plan includes policies of the Teignbridge Local Plan (adopted 6 May 2014, the 'LP') and of the Exminster Neighbourhood Plan (made on 17 March 2015). I have also had regard to various other material considerations including the National Planning Policy Framework (updated 19 February 2019, the 'NPPF') and the Planning Practice Guidance ('PPG').
4. The property Ross Hi is an early twentieth century semi-detached property. It sits on elevated ground behind a retaining wall flanking Riviera Terrace, part of the principal route through Exminster. The appeal site comprises land and an existing garage and storage building within the same ownership as Ross Hi. However the site is separated from Ross Hi and the garden immediately around it. That is by way of a service lane accessed via, and perpendicular to, Aboveaway which is towards the east. Aboveaway becomes River View Terrace as it tracks southwards.

Main issues

5. Based on all I have read and seen, the main issues are (i) whether or not the development proposed would be tantamount to the creation of an independent dwelling, (ii) the effect of the proposal on the character and appearance of the

area, and (iii) the effect of the proposal on the privacy from which those nearby presently benefit. In the event that I find that harm would result, I will then gauge whether any other material considerations in favour of the scheme would nonetheless justify allowing the appeal.

Reasons

Whether or not tantamount to an independent dwelling

6. The proposal, as described on the application form, is for ancillary accommodation. In the abstract ancillary accommodation may be occupied as such whilst being reasonably-sized and having some degree of separation and self-containment from a host property. The proposal here is also for the conversion of an existing building used in connection with Ross Hi. Notwithstanding the representations of some nearby, there is no indication from the Council that the existing building is unauthorised or unsuitable for conversion.¹ In theory, and in some circumstances, a condition may be appropriate to secure the use of a building as ancillary.²
7. However there comes a point where such a condition would conflict with the nature of development in actuality (a matter of planning judgement). NPPF paragraph 55 sets out that conditions must be enforceable; a condition related to ancillary use would in all likelihood fail that test if it applied to a building that was, to all intents and purposes, an independent dwelling. In my view that would be the situation here, notwithstanding the appellants' intentions.
8. The proposal would entail the alteration of what is presently an essentially functional outbuilding. The resultant building would have a more domestic appearance, comprise two storeys and would benefit from kitchen facilities, a living area, bedroom, bathroom, patio, and an area of garden. By consequence the accommodation proposed would be of a size, arrangement, and nature so as to readily enable occupation on a day-to-day basis. Moreover, as set out above, the appeal site is physically separated from the garden immediately around Ross Hi such that it may be accessed and occupied independently.
9. I therefore conclude that it is reasonable to assess the proposal as tantamount to the creation of an independent dwelling, the basis on which the Council have assessed the scheme. I also note that the appellants have brought to my attention the recent construction of a dwelling by No 9 Higher Aboveway nearby in support of their proposal.³ Irrespective of that finding, however, the proposal would nevertheless result in visual alterations to the garage and an additional intensity of use compared to present.

Character and appearance

10. Higher Aboveway and also Aboveway project southwards from Riviera Terrace at the fringes of Exminster where the built form gives way to rolling rural surroundings. With only occasional exceptions in the immediate vicinity, nearby properties are arranged fronting streets in regular plots of greater length than

¹ Albeit there is no formal planning history before me to the garage or substantive information related to its compliance with the limitations of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, or not.

² For example model condition 47 of Appendix A to Government Circular 11/95.

³ Permitted in outline via decision notice dated 11 August 2015, Ref 15/00410/OUT following an unsuccessful appeal in 1992.

width. There is comparatively generous spacing between the rear elevations of properties along Higher Aboveway, Riviera Terrace and River View Terrace in this location, which provides for a comfortable visual transition to the countryside beyond (of which there are glimpsed views between properties). Nearby residents have indicated that intervening space arose historically as an orchard or as allotments.

11. Aside from the service lane, the appeal site is therefore set between other land associated with nearby properties. Whilst there are outbuildings either side of it, they are notably more modest in height and scale. The existing building within the appeal site is atypically large compared to others along the service lane, which tend to be modest utilitarian structures (many of which likely trace their origins to the initial construction of neighbouring properties). Although planting, boundary features and other paraphernalia within domestic gardens towards the south and east varies, because of the perpendicular alignment of Ross Hi with properties along Higher Aboveway and the broadly level topography here, the existing garage is readily apparent from many nearby properties and within their gardens.
12. At present the garage is a simple timber-clad building. Plan 1769-02 shows how various existing windows would be altered or engaged, new windows and roof lights inserted, and the existing garage door replaced by what appears to be a domestic front door. Collectively, alongside intended alterations to the plot including the removal of existing sheds to enable the use of a paved area, and given the scale of the garage described above, the proposal would result in a building that would appear residential in its own right. That is in contrast to a utilitarian or subservient outbuilding, such as those nearby where less intricate detailing and quality of finish is typically to be expected. The elevation of the proposed garage facing Ross Hi and the service lane would essentially have the appearance of a chalet bungalow as opposed to a functional outbuilding.
13. Visually the proposal would result in what appears to be an independent dwelling in an incongruous location compared to the existing ordered and relatively open character of the area. Even were the resultant building to be used solely in connection with Ross Hi, it would nevertheless appear discordant in that context. I therefore conclude that the proposal would adversely affect the character and appearance of the area in conflict with the relevant provisions of LP policy S2, criterion a), NP policy EXM3 and NPPF paragraph 127, bullet c). In summary those elements of policies seek to ensure that all development integrates harmoniously with its surroundings.

Living conditions

14. The land and building within the appeal site will inevitably be used from time-to-time as they stand, and there is therefore some existing potential for overlooking of neighbouring gardens and towards surrounding properties. Privacy within nearby gardens and properties is not absolute on account of the narrow nature of plots and proximity of dwellings to one another. The appellants contend that the recently-permitted dwelling adjacent to No 9 Higher Aboveway already overlooks '32 gardens and properties'. Boundary screening and planting, as shown on plan 1769-02 and elsewhere, would temper the extent to which the privacy of those nearby would be affected.

15. However, irrespective of whether or not the proposal would result in an independent dwelling in practice, the proposal inevitably aims towards creating a more useable space and therefore enabling an increased intensity of use. First floor windows facing towards Ross Hi and surrounding gardens would be altered and new roof lights inserted. As set out above the location and nature of the scheme is starkly out of keeping with the prevailing pattern and inter-relationship of buildings here. In that context the proposal would reduce the privacy enjoyed by nearby residents in their gardens and homes relative to the existing nature of the area, in respect of which there is a legitimate expectation of being broadly maintained (particularly in relation to Nos 1, 2 and 3 Higher Aboveway and also Nos 1 and 2 River View Terrace).
16. That reduction may be visual, with increased potential for overlooking at close proximity and from an elevated position. It may also be more generally-felt by virtue of increased comings-and-goings and other activities and noise occurring compared to current circumstances. Boundary screening and planting could not reduce the potential for such to acceptable levels in my view, being inevitably confined to relatively low level and lightweight. Although the reduction in privacy resulting from the proposal would principally affect the use of gardens nearby, there would also be oblique views towards rear elevations of some properties and the privacy of occupants detrimentally affected accordingly.
17. Even relatively minor changes to the built environment may have a significant effect on the perception of privacy. The appellants' citing of their perspective of the effect of the recently-permitted dwelling adjacent to No 9 attests to that point. Even if that proposal did affect privacy nearby, however, that does not justify allowing unacceptable development. Nevertheless, having visited that location, it appears that the plot size in that instance is significantly larger than the appeal site, and the separation between that dwelling and others nearby markedly greater than would result from the proposed scheme. There is, moreover, limited information before me as to the planning circumstances that applied in that case.
18. For the above reasons I therefore conclude that the proposal would result in significant adverse effects to the privacy of those nearby. That would be in conflict with the relevant provisions of LP policy S1, criterion e) and of NPPF paragraph 127, bullet f). In summary those elements of policies seek to ensure that all development respects residential amenity and that high standards of such are maintained. That is a point reiterated in the PPG, which sets out how consideration should be given to the prevailing pattern of development and the inter-relationship of buildings to one another.⁴

Other matters

19. The scheme would undoubtedly be beneficial to the appellants were it to be used for purposes ancillary to Ross Hi, by way of providing additional floorspace of modern standard and flexibility as to how elements of the property may be used. However those benefits are essentially private, and there is no robust evidence before me as to their justification with regard to any personal circumstances, or otherwise. As such those benefits of the proposal would not be sufficient to outweigh the clear harm arising from the scheme as reasoned in respect of the second and third main issues.

⁴ Reference ID: 26-024-20140306.

20. As set out initially the proposal would be tantamount to the creation of a new dwelling in practice. Considered in that light the proposal would result in an addition to housing stock, and entail other benefits including that future occupants would bring trade to nearby services and facilities. However the benefits of one new home would inevitably be limited, and in this instance would be confined to an incremental numerical addition rather than in terms of quality. That is particularly relative to the annual average of 620 homes that LP policy S4 seeks to enable. Moreover neither the support in the development plan nor NPPF for new housing is at the expense of ensuring that all development integrates appropriately with its surroundings. As such no other matters, individually or collectively, are sufficient to justify allowing the appeal.
21. There is no evidence before me to indicate that the Council are unable to demonstrate a five year land supply of deliverable housing sites with reference to NPPF paragraphs 11, 67 and 73. However, for the avoidance of doubt and inherent in my reasoning above, is that even if that were not in evidence the adverse impacts of granting permission would significantly and demonstrably outweigh the limited benefits that would result.

Conclusion

22. For the above reasons, having considered the development plan as a whole, the approach in the NPPF and all other relevant considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR