



Appeal Decision

Site visit made on 3 July 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2019

Appeal Ref: APP/M2270/W/18/3215871

Down House, The Down, Lamberhurst, Tunbridge Wells, Kent TN3 8ET

- 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 Mrs V and Mrs Y Settle against the decision of Tunbridge Wells Borough Council.
 - The application Ref 18/00455/FULL, dated 29 January 2018, was refused by notice dated 11 May 2018.
 - The development proposed is construction of a domestic ancillary building to be used as a dance studio.
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Decision

1. The appeal is allowed, and planning permission is granted for construction of a domestic ancillary building to be used as a dance studio at Down House, The Down, Lamberhurst, Tunbridge Wells, Kent TN3 8ET in accordance with the terms of the application, Ref 18/00455/FULL, dated 29 January 2018, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following submission of a Preliminary Ecological Assessment (PEA) and an Arboricultural Impact Assessment and Method Statement (AIAMS) with the appeal, the Council now considers that sufficient information has been submitted to satisfy its concerns on ecological and arboricultural matters, the subject of the Council's second and third refusal reasons.

Main Issues

3. The remaining main issues overlap and are the effect of the proposal on the character and appearance of the site and the rural landscape character and appearance of the surrounding area.

Reasons

Character and appearance

4. Down House is a substantial detached dwelling arranged over three floors with a pitched roof over. It dates from the 18th century but has been enlarged over time. There are two outbuildings close to Down House. To the west is the Bake House, which has single and two storey sections whilst to the north-west is a detached Coach House, with a pitched roof some 8m high. Down House and these outbuildings are all Grade II listed buildings. The Lamberhurst Down

Conservation Area includes these buildings and the front northern part of the site fronting Furnace Lane but does not extend to the rear of the buildings.

5. The curtilage of Down House is extensive, covering about 20 acres, with expansive views from the back of the building over gently falling land levels towards formal gardens, open grassland, individual trees and areas of woodland. The site is outside the Limits to Built Development for the settlement of Lamberhurst. The whole site is within the High Weald Area of Outstanding Natural Beauty (AONB).
6. The proposed dance studio building would be located to the south-west of Down House within a square shaped open glade bound by woodland to the north and by belts of trees to its western, southern and eastern sides. Historic maps indicate that this glade once formed a kitchen garden for Down House, but it currently comprises a disused hard surfaced tennis court enclosed by wire mesh fencing with open grassland to all sides. To provide a level playing surface an embankment has been cut into the northern side of the glade where land levels rise. The building would be sited on the northern half of the tennis court and some adjacent grassland to its western side. Access to it would be via a path through the woodland curving around a large pond within the woodland and linking to a path adjacent to the Bake House.
7. Policy H11 to the Tunbridge Wells Borough Local Plan (2006) (LP) relates to extensions and ancillary buildings outside the Limits to Built Development. It sets criteria including, (2) *"the extension would be modest and in scale with the original dwelling and would not dominate it visually or result in a poorly-proportioned building or detract from its setting"* and (3) *"the dwelling as extended would not lend itself to future sub-division to form a separate dwelling"*.
8. There is disagreement between the parties on the degree to which the term *"modest"* should be assessed in relation to the original dwelling or the curtilage. To my mind both are relevant. The dimension of the proposed building according to the Council would be 24.5m in length, 20.1m in width and 8m to a central roof ridge. It would not be a small building but has been designed to provide a full size ballroom dance floor for the appellants' private use to enable regular practice close to home in relation to their vocation. However, the building would be considerably smaller than Down House and comparable in height to the Coach House. It would be sited some 115m from Down House and be screened from it by the intervening block of woodland. The proposal would not therefore dominate it visually or detract from its setting or that of other out buildings. Moreover, the proposal would not be a poorly proportioned building but would have a symmetrical profile and distinctive design suited to its proposed purpose.
9. The curtilage of Down House extends to approximately 75,000 square metres according to the appellants whereas the proposed building would have a floor area of 488 square metres, less than 1% of the curtilage size. The building would also be sited on an area of previously developed land occupying an area slightly smaller than that of the existing tennis court. The building would be higher than the tennis court enclosure but would nonetheless be screened from wider views across the site. The proposal would be a *"modest"* ancillary building in respect of criterion (2) to Policy H11. It would also accord with

Policy EN1 of the LP that sets general criteria for new development including that its nature and design respect the character and context of the site.

10. Whilst the proposed building would be large enough for sub-division and conversion to residential use, its remote siting would not readily enable it to be used as a separate dwelling or dwellings. The proposed pedestrian access would be suited to use as an ancillary building but inadequate for independent residential occupation. The changes in land level and the proximity of trees and listed buildings would form constraints to provision of an independent vehicular access, which would also require planning permission. The use of an appropriately worded planning condition would provide an additional control to guard against sub-division and conversion to habitable accommodation. The proposal would not therefore conflict with criterion (3) of Policy H11.

Rural landscape character

11. The location of the proposed building has a high degree of visual containment being bound by woodland and trees belts. Nevertheless, the introduction of a built form to replace the developed area of the tennis court would result in change to the character and appearance of the surrounding rural area, which is of high landscape value being within the High Weald AONB.
12. Paragraph 172 of the National Planning Policy Framework (the Framework) states that "*Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection*". Policy EN25 of the LP and Policies 4 and 14 of the Tunbridge Wells Borough Core Strategy (2010) (CS) are consistent with this and collectively promote the conservation and enhancement of the High Weald AONB and the protection of the countryside for its own sake.
13. The appellants have submitted a Landscape and Visual Appraisal (LVA) which follows the best practice guidance for Landscape and Visual Impact Assessment by the Landscape Institute/Institute of Environmental Management and Assessment. The LVA concludes that the proposal would not materially change the key landscape characteristics or elements and features identified in the landscape character assessment, that it would be contained within the existing pattern of dispersed settlements, extensive woodland and small to medium scale fields, and that the landscape pattern would continue with the proposal in place.
14. The Council disagrees and considers that harm would arise through a change in the nature and likely intensity of activity and through a localised landscape impact. The proposed dance studio use of the building would be a different form of ancillary recreational activity to the existing open tennis court, but the use of the land would not necessarily be more intense or more domestic in character. The building would contain musical accompaniment to dance and result in less disturbance than from tennis on the open court. Activity could take place inside the building during hours of darkness, but the containment of the site by trees would largely conceal any impact from lighted windows. The building would be remote from Down House but would nonetheless be ancillary in size and nature to the primary residential use. The size and profile of the building would not be dissimilar to that of an agricultural barn which feature in the wider surrounding rural landscape. The use of timber to the walls and slate to the roof would also help to assimilate the building into this setting.

15. In relation to the localised landscape impact, the screening effect of surrounding trees would be reduced during the winter months with the fall of leaves from deciduous trees. Nonetheless, the density and height of trees to the north-west would still effectively conceal the proposal from view from dwellings in Furnace Avenue, the nearest road to the site. The great separation distances to Furnace Lane to the north-east and The Slade to the east and screening effect of trees between, even in winter, would mean that the proposal would have a negligible impact on the countryside from these other public areas. The greatest impact of the building would be from within the grounds of Down House, particularly to the eastern side of the proposed building as the tree belt here is not as solid as to other sides and contains some smaller trees. An end elevation with glazed windows would also face this direction.
16. The appellants' AIAMS indicates that the vast majority of the trees around the building would be retained and protected during the course of building works. Tree loss would be minor and primarily to enable construction access, notwithstanding the use of temporary matting. The PEA also indicates that the route for the temporary construction access would approach the tennis court site from its eastern side. The impact of the provision the temporary access, the permanent footpath access and for services for the building would be mitigated by the use of appropriate technologies. A condition requiring approval of a landscape plan would ensure provision of replacement planting where necessary and could enable the strengthening of the tree belt to the eastern side of the proposed building to compensate for any loss here.

Other matters

17. I have no reason to disagree with the Council's findings that the proposal would not have any impact on the setting of the listed buildings.

Conclusion

18. The outbuilding and its proposed use would be ancillary in nature notwithstanding its separation from the dwelling at Down House. Its massing would be modest in the context of the site and would not have an adverse effect on the character and appearance of the site as a whole. The proposal would be in accordance with the limitations set by LP Policy H11 on the nature of ancillary buildings outside the Limits to Built Development.
19. The new building would not be visually dominant, nor would it have an adverse effect on the rural landscape character and appearance of the surrounding area. It would respect Policy 172 of the Framework that specifies that the scale and extent of development within AONBs should be limited. It would similarly be in compliance with LP Policy EN25 that requires a proposal to have a minimal impact on the landscape character of the locality and CS policies that promote the protection of the countryside for its own sake. The building would have a distinctive appearance related to its proposed use; but it would be in accordance with Paragraph 127 of the Framework in that it would be visually attractive with appropriate and effective landscaping and sympathetic to local character including the landscape setting.
20. For the reasons given and having regard to all other matters raised, including the Borough Landscape and Character Assessment (2017), the appeal is allowed subject to conditions.

Conditions

21. In addition to the statutory condition limiting the time period for commencement of the development, a condition is necessary to list the plans and documents approved in the interests of certainty. To ensure a satisfactory appearance to the development and its landscaped setting conditions are necessary to approve materials used in the external construction of the building and in relation to hard and soft landscape measures. For the same reason a condition is necessary to ensure that all existing trees to be retained are safeguarded during construction works in accordance with the AIAMS. Whilst the building has been designed for a very specific purpose, given its size a condition is necessary to ensure that its use remains incidental to that of the dwelling at Down House. Finally, to ensure that the development promotes biodiversity conditions are necessary to approve enhancement measures and to control external lighting.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 17030 - PL – 10, 17030 - PL - 07 Rev C, 17030 - PL - 08 Rev C, 17030 - PL – 11, 17030 - PL – 12, Landscape and Visual Appraisal (dated December 2017), Preliminary Ecological Appraisal (dated October 2018), Arboricultural Impact Assessment and Method Statement (dated October 2018).
- 3) No development shall commence above ground level until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No above ground construction shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land identifying those to be retained, specify details for the temporary construction access and servicing for the building and set out new soft and hard landscape measures.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) The development shall take place in accordance with the details of the Tree Protection Plan (drawing no. J20577_Arb_TPP 'Tree Protection Plan') and Arboricultural Method Statements and arboricultural supervision (Arboricultural Method Statement, dated October 2018) and in accordance with the current edition of BS 5837 Trees in Relation to Design, Demolition and Construction. All trees to be retained must be protected by barriers and/or ground protection.
- 7) The dance studio hereby approved shall only be used incidental to the enjoyment of Down House and shall not be occupied as living accommodation or used at any time for other purposes unless otherwise approved in writing by the local planning authority.
- 8) No external lighting shall be installed on the site without the prior written consent of the local planning authority.
- 9) Prior to the commencement of any above ground works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall have regard to the enhancement of biodiversity generally. It shall be implemented in accordance with the approved proposals within it and shall be carried out in perpetuity. The development shall take place in accordance with the details of ecological avoidance and mitigation measures as outlined within the Preliminary Ecological Appraisal (dated October 2018).