
Appeal Decision

Site visits made on 27 November 2019 & 21 February 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2020

Appeal Ref: APP/J1860/W/18/3218158

Close Cottage, U61029, Longdon Heath, Upton Upon Severn WR8 0QZ

- 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 Grant Laughton-McConnon against the decision of Malvern Hills District Council.
 - The application Ref 18/00398/FUL, dated 15 March 2018, was refused by notice dated 13 June 2018.
 - The development proposed is the conversion of an existing ancillary outbuilding to provide holiday unit or ancillary annexe.
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Decision

1. The appeal is dismissed.

Procedural matters

2. I understand that an application was also made for listed building consent, but that is not now before me.
3. As originally submitted the scheme proposed the erection of a new car port / store but that element had been deleted by the time the application was determined.

Main Issues

4. The main issues are
 - a) whether the development would be acceptable in principle in the open countryside, and
 - b) whether it would preserve the setting and significance of Close Cottage, a Grade II listed building.

Reasons

The principle of the development

5. Close Cottage sits within the loose cluster of buildings and properties. In the *South Worcestershire Development Plan* (the Development Plan) the site is outside any development boundary and is in the open countryside.
6. The proposal concerns a detached outbuilding (the outbuilding) in the curtilage of the property. It was originally a pig cot, but it was extensively modified and enlarged in the 1990s to form a brick workshop and a 3-bay car port. It is now intended to convert the entire outbuilding to residential accommodation

- comprising 2 en-suite bedrooms, a kitchen and a living room. The parties agreed that the building would contain all the facilities for day-to-day living.
7. The appellant is seeking to use the outbuilding, as altered, for 2 purposes. One of these is to be ancillary accommodation for family and friends visiting those who live at Close Cottage. In this regard, I am aware of the Council's advice in its Supplementary Planning Document that such accommodation should not be detached and should not be capable of independent living. I also note the Inspector's comments in the appeal decision concerning Penny Patch, Martley.
 8. The proposal before me would have the facilities and space to be a separate unit. However, legally its detached nature and the presence of features sufficient to support independent living do not, to my mind, mean the proposal is automatically to be considered as a separate planning unit or a non-ancillary dwelling. Rather, it is a matter of fact and degree. I have no basis to question the appellant's intentions in this regard, and so, despite the facilities it would offer, I accept that any residents there would share their living activity in the company of those in Close Cottage. In that regard it is different to the Martley case as that was for a holiday unit rather than ancillary living accommodation, and so the possibility for the link to be as strong between the occupiers of the house and those in the conversion was less. As such, I find that what is now before me would be part-and-parcel of the main house rather than an independent dwelling or a separate planning unit, and so I have no grounds to consider this should be assessed, contrary to the appellant's submissions, as a material change of use.
 9. It was the Council's contention that such a form of occupation could not be controlled, as any condition would be unenforceable. To my mind though a condition would not be necessary as to use it independently would be a material change requiring planning permission. Despite that, conditions relating to the occupation of a building are commonly imposed, and their enforceability is not so difficult as to render them contrary to paragraph 55 in the *National Planning Policy Framework* (the Framework).
 10. Given this would not be an independent dwelling, I raise no objections to this aspect of the development with regard to the sustainability of the location and so it would not conflict with Policy SWDP2(c) in the Development Plan, which restricts housing outside of development boundaries.
 11. The second use the appellant is proposing is as a holiday unit for paying guests, and this he says is to be the building's '*intended primary purpose*'. It is possible to use a dwelling for paying guests without it being of a scale or nature to constitute a material change, and if that was the case here then, given my findings above, this element would also be acceptable locationally as it would not be requiring planning permission. However, in the description of development the holiday use is not identified as '*ancillary*'. Moreover, the appellant accepts that activity '*would potentially*' be a material change of use unless controlled by condition. The wording or direction of such a condition has not been offered though, and it is unclear as to whether it would relate to matters such as, say, the number of visitor nights or whether it would concern ownership and the planning unit. Nonetheless, given the appellant's stated position I shall treat it as being a material change of use.
 12. Policy SWDP35 in the Development Plan concerns the grant of planning permission for visitor accommodation. It does not require this type of

accommodation to be within the development boundary. However, it states, in its upper-case policy, that accommodation for visitors would only be permissible outside such a boundary if, among other things,

'it re-uses a redundant building of permanent and substantial construction' (Policy SWDP35(v)).

The reasoned justification for this policy then says

'Within the open countryside, making the best use of existing accommodation through re-use, extension or alteration, will help to minimise environmental impacts. Converting redundant or underused buildings which are not of a permanent and substantial construction, nor capable of conversion without major restructuring, additional building, or extension, will clearly have a greater landscape impact.'

The upper-case policy is focussed on *'a redundant building'*. In contrast, the justification concerns making use of *'existing accommodation'* and is silent on its redundancy, other than in relation to buildings that are not of a substantial or permanent construction – a matter that is not relevant in this instance given the outbuilding's apparent soundness. However, the purpose of the reasoned justification is to provide a justification for the upper-case policies and so the expectation is that it should flow from them. Given this, and in the absence of any basis to find otherwise, it is reasonable to assume the *'existing accommodation'* to which the reasoned justification refers is only the *'redundant building'* of the upper-case policy, and there are no grounds to consider it should be applied more widely. In that sense, there is no conflict between these 2 elements of the development plan.

13. The brick portion of the outbuilding appeared to be a well-used workshop. Moreover, there was parking and a significant amount of storage in its bays. While these bays might be too short for some cars they nonetheless seemed to be of a reasonable length for that purpose, accepting that by their nature they would often not achieve total protection from the weather for the vehicle. I therefore find that this outbuilding is not redundant, and so its change of use to visitor accommodation would be in conflict with Development Plan Policy SWDP35.
14. I am aware that Policy SWDP34 of the Development Plan promotes tourism development in the District, but that policy expressly states it does not apply to visitor accommodation. In any event, the support it offers must be seen to dovetail with the subsequent Policy SWDP35, which quite clearly accepts visitor accommodation in *'redundant'* rural buildings. Therefore, when reading the development plan as a whole, the conflict I have identified with Policy SDWP35 is not outweighed by Policy SWDP34. The support from the Council's Economic Development team must also be weighed in this light. Moreover, I see nothing that means this Development Plan policy is inconsistent with the support for rural tourism in the Framework.
15. I note as well the comments about paragraph 79(d) of the Framework. This is not an isolated location or for a home as such, and so the relevance of the paragraph is questionable. Despite that, I appreciate the paragraph supports development that would involve the sub-division of an existing dwelling. However, although a dwelling is not defined, I consider that applies more appropriately to the sub-division of the house itself, rather than supporting new

dwelling elsewhere in the curtilage. I also note that, when considering the re-use of buildings, paragraph 79(c) only accepts cases where buildings are 'redundant'. I am therefore not persuaded that paragraph 79 offers support for the development before me.

16. Accordingly, I conclude that the building is not redundant and so the proposed holiday unit would be unacceptable in principle as it would be in conflict with Development Plan Policy SWDP35, and I am aware of no material considerations to justify a decision contrary to this development plan conflict.

Effect on the setting of the listed building

17. The Grade II listed Close Cottage has been appreciably altered and extended over time. However, when seen externally its significance is still apparent as a relatively simple dwelling for a rural worker that originated from the 17th Century, with its special architectural and historic interest lying in its materials, scale, structure and detailing.
18. The brick pig cot has also changed significantly following the extensions in the 1990s and little of its historic form or fabric remains. Despite this, when seen from the front it nonetheless constitutes a sympathetic element in the setting of the cottage. This is because its design and materials respect the rural nature of the context, while the open bays, which give the impression of a cart store, ensure the structure is not too dominant or overwhelming. Consequently, even accepting that this structure is mainly modern, it displays a sense of subservience in relation to Close Cottage, and appears to be of the nature, position and design that would be expected of an outbuilding within the curtilage of such a rural dwelling. In this regard it does not impede an understanding of the origins of Close Cottage.
19. The appellant accepts the outbuilding is listed by virtue of section 1(5) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* but contends that as there is no impact on its significance then the works do not require listed building consent. Putting that matter aside for now, section 66 of that same Act requires that, when considering a grant of planning permission that affects a listed building, special regard shall be given to the desirability of preserving its setting.
20. I consider that by infilling the bays with solid wooden panelling and horizontal windows the outbuilding would become far more domestic in appearance, and would not reflect its existing rural nature as well. It would also be appreciably more dominant. Therefore, its current character and appearance as a rural subservient building would be appreciably and harmfully undermined. As a result, its relationship as an ancillary outbuilding to Close Cottage would be very much diminished thereby adversely affecting the composition and so causing harm, albeit less than substantial, to the setting of the main house.
21. I also consider the 2 rooflights that had been formed are discordant because of their design and their projection above the roof slopes. However, if they are not lawful, I consider their removal could be secured by condition and so their presence is not a basis to resist the scheme.
22. Given my findings on the effect on the setting of Close Cottage, there is no benefit to my decision in considering whether the significance of the outbuilding itself is affected.

23. Under the Framework the identified harm to the significance of the designated heritage asset needs to be weighed against the public benefits of the proposal. To my mind the building at the moment is in good condition and seems to be gainfully used as a workshop and for parking/storage. As such, I have no reason to consider that if the appeal were to be dismissed its condition is likely to deteriorate markedly in the foreseeable future, and so it cannot be assumed harm to the listed building would result as a consequence. Whilst it was said the proposal was a better use of this resource, any benefit this may provide is not sufficient for the harm to be outweighed.
24. The appellant considered that monies generated by the holiday accommodation would be used to help maintain the principal listed building. However, I am unclear as to how extensive or regular these monies would be. I am also unaware as to the financial demands of Close Cottage, and there is no formal mechanism before me to ensure the revenue was used in that manner. The weight I can afford this as a public benefit is therefore limited. Similarly, whilst there may be a need for tourist accommodation in the area, it has not been shown that the use of this outbuilding can only be achieved in this way, and the benefit to visitor provision arising from this single unit means it does not outweigh the harm to the listed building. Indeed, even if Policy SWDP34 were to be taken into account that only supports tourism development where it would conserve the setting of heritage assets.
25. A final potential benefit would result from the removal of the prefabricated store to the side of the outbuilding. This would allow the outbuilding's context to be better appreciated, but views from this direction are limited and only a relatively small part of the outbuilding would be better exposed. Its removal would also have little benefit on the setting of Close Cottage as it is on the side of the outbuilding distant from the main house, while it has not been shown that the removal of that store is only practicable if this particular scheme goes ahead. Therefore, as a public benefit it does not outweigh the harm identified.
26. Accordingly, I conclude that the works would fail to preserve the setting of Close Cottage, so causing less than substantial harm to its significance as a designated heritage asset. In the absence of any public benefits to outweigh this harm the proposal would conflict with Development Plan Policies SWDP6, SWDP21 and SWDP24, which seek to safeguard heritage assets, and the Framework.

Other matters

27. Although concern has been raised about the noise by users of the visitor accommodation and the effect this would have on the living conditions of those around, given the distances involved I consider no harm would occur in this regard.

Conclusions

28. For the reasons given I dismiss the appeal.

JP Sargent

INSPECTOR