
Appeal Decisions

Site visit made on 7 July 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 July 2020

Appeal A Ref: APP/J1860/C/19/3241167

Nutcross Farm, Shrawley, Worcester WR6 6TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Tim Godfrey against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice was issued on 14 October 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission the unauthorised material change of use of the Land from agricultural to garden, approximately hatched blue on the attached plan.
Without planning permission the unauthorised material change of use of an agricultural building to part storage building and a part residential annexe accommodation, approximately hatched in green on the attached plan.
 - The requirements of the notice are:
 1. *Permanently cease the use of the land approximately hatched blue on the attached plan for garden use.*
 2. *Permanently cease the use of the building approximately hatched green on the attached plan as storage and residential annexe accommodation.*
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/J1860/W/19/3238022

Nutcross Farm, Shrawley, Worcester WR6 6TS

- 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 Tim Godfrey against the decision of Malvern Hills District Council.
 - The application Ref 19/01082/FUL, dated 18 July 2019, was refused by notice dated 23 September 2019.
 - The development proposed is a retrospective change of use to domestic curtilage, and retention of ancillary storage building including annexe accommodation.
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Decisions

Appeal A- the enforcement appeal

1. It is directed that the enforcement notice be corrected by adding the word "ancillary" before the word "storage" between the words "part" and "building" in the second paragraph of the recitation of the matters alleged to be a breach of planning control; the substitution of the plan annexed to this decision for the plan attached to the enforcement notice, and by the deletion of the words "storage and" in the second requirement of the notice. Subject to these

corrections the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the land and buildings at Nutcross Farm, as shown on the plan attached to the notice, for a change of use of the land to that of garden land and the use of the building for ancillary storage and residential subject to the following condition:

- 1) The building shown hatched in green on the enforcement notice plan shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Nutcross Farm.

Appeal B – the s.78 appeal

2. The appeal is allowed and planning permission is granted for a change of use to domestic curtilage, and retention of ancillary storage building including annexe accommodation at Nutcross Farm, Shrawley, Worcester WR6 6TS in accordance with the terms of the application, Ref 19/01082/FUL, dated 18 July 2019, subject to the following conditions:
 - (1) The residential annexe as shown on drawing no. 4 shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Nutcross Farm.
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings nos. 1, 2, 4 and 5a (Amended 01).

Procedural matters

3. The storage use carried on in the building subject of the enforcement notice is for storage ancillary to the use of the dwelling, Nutcross Farm. There is no suggestion that a separate B8 storage use is alleged. So as to make that clear, I shall correct the notice to specify this.
4. Following my site visit, it appeared to me that both the enforcement notice plan, and the site plan for the application subject of the s.78 appeal, covered land not within the curtilage of the dwellinghouse, Nutcross Farm. Both of the main parties agreed that the plans should be substituted with one showing a smaller site area, excluding the access road leading to the adjacent industrial buildings. I consider that no-one would be prejudiced by my substituting these plans, and in respect of the s.78 appeal, it would not materially alter the nature of the proposal. The Council raised a point about the parking implications of the revised plan, which I shall deal with below. I shall therefore substitute the revised plan on the enforcement notice, and deal with the s.78 appeal in accordance with the revised plan.

Reasons

Appeal on ground (d) – that at the date when the notice was issued, no enforcement action could be taken

5. The notice attacks three distinct uses; the use of the land as garden land, the use of part of the building for storage purposes, and the use of part of the building as a residential annex. The appellant accepts that as that latter use began only in 2017, enforcement action could be taken on the date of issue of

- the notice. However, in respect of the other two uses, it is claimed that they commenced prior to 10 years before the date on which the enforcement notice was served.
6. The onus of proof on a ground of this type lies with the appellant, and the test of such proof is on the balance of probabilities. Outline planning permission was granted under Ref: 07/01151/OUT for the erection of one detached dwelling in association with an existing furniture production business following removal of 12 piggery buildings (2200 sq m). The building in question is one of those shown as being demolished. It has not been demolished, and, on the Council's evidence, the time for taking enforcement action to require its demolition has passed
 7. The Planning Policy Guidance sets out how applications for a certificate of lawful development should be dealt with. I see no reason why such guidance should not apply equally in dealing with similar claims under ground (d) on an enforcement appeal. It says that in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
 8. The appellant says that he has used the building for storage since he purchased Nutcross Farm in 2006, when he began to run the furniture and wooden products business on land to the west of the building. He says that he stored valuable items, which could be securely locked away, in association with the building of his house, and subsequently the building has been used for storage, for some household items, tools, and gardening machinery to date.
 9. The outline planning permission was not approved until the end of December 2007 and the approval of reserved matters was not given until 11 August 2009. It is difficult to understand the appellant's claim that he kept valuable items in connection with the building of the house since 2006, when the work on constructing the house was so far off in the future. The appellant says that he lived in a mobile home on the site from August 2008, again, well before the time when construction could start, but possibly in anticipation of the reserved matters approval being forthcoming.
 10. The appellant's supplementary statement says that the building was used for additional storage for various domestic items for the family, that could not physically fit in the mobile home. This is not wholly consistent with the appellant's claim about using it for domestic storage from 2006. Even so, there is no evidence from the Council to contradict the appellant's claim that it has been used for storage since 2008, which is well before the 10 year period relevant to this ground of appeal. I find therefore, on the balance of probabilities, that the building was used for storage for more than 10 years prior to the date of issue of the enforcement notice, and thus no enforcement action could be taken against this use.
 11. In respect of the use of the land hatched blue on the notice as a garden, the appellant's undisputed claim is that he lived on the site in a mobile home from August 2008 up until the dwelling was occupied. The aerial photographs submitted by the appellant show that in the one dated 2004, the area in question was covered by agricultural buildings, since demolished, and the one

dated 2010 shows an open area, but it does not unequivocally show that it was in garden use. There is no statement from the appellant explaining exactly how the land in question was used. I therefore find that the applicant's evidence is not sufficiently precise and unambiguous to succeed in establishing that the time for taking enforcement action against the use as garden land has passed.

12. I therefore conclude on that the appeal ground (d) succeeds in part, in relation to the use of the building for storage, but it fails in relation to the use of part of the building hatched green as a residential annexe and in relation to the land hatched blue as a garden. I shall vary the notice accordingly.

Appeal on ground (a) – that planning permission should be granted and the Section 78 appeal

13. As the Section 78 appeal deals with the same matters as those alleged in the notice, it is appropriate for me to deal with them together.

Main issues

14. The main issues are:

- i) the effect of the use of the land as a garden on the character and appearance of the countryside;
- ii) whether the use of the building for storage and a residential annexe would conflict with policies aimed at restricting development to the most sustainable locations, and
- iii) the effect of the residential and storage use of the building on the character and appearance of the area.

Reasons

Use as a garden – character and appearance

15. The site lies outside of any development boundary defined in the South Worcestershire Development Plan (SWDP), and where Policy SWDP 2 says that it is defined as open countryside where development will be strictly controlled and will be limited to certain types of development referred to in other policies of the plan, none of which are relevant to the development in question. Whilst the policy does not specifically refer to changes of use to garden, storage or residential annexes, it refers to "development"; the uses concerned here amount to development and would conflict with this policy in principle.
16. Turning to the specific impacts, the land hatched blue on the enforcement notice used as garden lies between the garden of the large detached dwelling, Nutcross Farm, and the older former agricultural buildings, the larger of which are used in connection with the appellant's furniture restoration and woodworking business. Although lying in the "open countryside" in policy terms, the reality is that the site bears little resemblance to the undeveloped land generally associated with "the countryside".
17. The planning permission for the erection of the dwelling left the land without any clear purpose, and in the absence of any planning requirement concerning the future use and condition of the land, I expect that it would become overgrown and neglected, more akin to urban dereliction than the countryside.

I consider that this is a fallback position which can be taken into account in the planning balance.

18. The land is not conspicuous from public viewpoints, and, being contiguous with the existing garden of Nutcross Farm, its appearance as a garden has no significant landscape impact. I find that its use as a garden causes no material harm to the character and appearance of the area. Thus, whilst the use is contrary to Policy SWDP 2, it does not conflict with the objective of that policy; its use has no bearing on sustainability considerations, and whilst the explanatory text to the policy notes that the high quality of the open countryside is an important planning attribute of the area, this small area of land does not exhibit such qualities. I therefore find that the garden use does not conflict with the underlying objectives of the policy, and that the benefit of putting the land to effective use, preventing it becoming overgrown and unsightly, outweighs the small degree of conflict with Policy SWDP 2.

Use of the building for storage and as a residential annexe

19. Turning to the use of the building, both the use for storage and use as a residential annexe amount to development, and thus conflict with Policy SWDP 2. The appellant asserts that both Malvern Hills and Wychavon Councils have consistently considered domestic related development acceptable in principle on other applications submitted since the adoption of the SWDP. However, the Council has not accepted this, and the appellant has only provided me with one example where such a use has been approved. Accordingly, I have to deal with the policy as it is formulated.
20. Neither use has any significant impact on the visual appearance of the countryside. In terms of the need to travel, the storage use would place no additional demands over and above that already created by the residential use of Nutcross Farm. In any event, I have found that the storage use is lawful through the passage of time, and this fallback outweighs the conflict with Policy SWDP 2.
21. The Council is concerned that the annexe has the potential to be used as a self-contained dwelling. However, that is not what is alleged, and it is not what the application seeks permission for. *Uttlesford DC v SSE & White* [1992] found that even if a separate building used for accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.
22. The facts of the Uttlesford case involved a garage building at the end of the rear garden, but the Court specifically rejected the argument that the Inspector should have found that it involved a separate planning unit and involved a material change of use.
23. In this case, the building is directly opposite the rear elevation of the main dwelling, where there is a close visual relationship. It is readily possible to walk from the parking area at the front of the house to the appeal building via the concrete surface which links the two. Whilst there is a parking area to the south of the appeal building, this does not form part of the application site, and the appellant's evidence is that it is used only in connection with the industrial units.

24. The building is occupied by the appellant's son, his girlfriend and their baby. It has a shared garden, and no separate curtilage or services. There is no fully functional kitchen. Whilst there is access to separate parking in the industrial area, I am told that this is not used by the occupiers, and that the shared parking facilities along with the main dwelling are used. The industrial area parking lies outside of the curtilage of Nutcross Farm and outside of the enforcement notice site. I am satisfied that the use of shared parking within the curtilage of Nutcross Farm would be consistent with an ancillary use.
25. As a matter of fact and degree, I find that the building is capable of providing ancillary residential accommodation, and would not involve the creation of a separate planning unit. Provided that the planning unit remains in single family occupation and continues to function as a single household, it would not become a separate dwellinghouse. Its use could be adequately controlled by condition to prevent its use as a separate dwellinghouse.
26. I note that the Council has approved a residential annexe in a separate building in the case referred to me by the appellant (Ref: 18/01642/HP), since the adoption of the SWDP. I have not been provided with a copy of the officer's report on that application, so I do not know the full considerations which led to that approval. On the other hand the Council has sought to distinguish that case from this on the basis of matters of physical proximity and the provision of separate parking. However, I have found that these matters do not preclude the building being ancillary to the main residential use of the family home. More pertinently, the Council has not explained how Policy SWDP 2 has been applied in that case, and this adds weight to my view that there is no significant planning objection to the use of the building as a residential annexe.
27. The use as annexe accommodation could result in some additional journeys, and I accept that the location offers few opportunities to travel other than by private car. However, as a residential annexe, its occupation in connection with the residential use of Nutcross Farm would be unlikely to give rise to the same number of journeys as would a separate dwelling, in that trips to visit family and for shopping would be likely to be lower, and there would also be the opportunity for shared trips. I therefore find that the impact on the need to travel would be modest.

Use of the building- character and appearance

28. The Council also alleges a conflict with Policy SWDP Policy 21 which deals with design. This concern is expressed only in the decision notice on the s.78 proposal, and it does not form part of the reasons for issuing the enforcement notice. I acknowledge that the utilitarian appearance of the building would not represent the high standard of design that new built dwellings should achieve.
29. I note that there is a planning obligation which requires the demolition of the building in question, but there is no suggestion that the Council intends to pursue action to enforce the performance of the obligation, and I therefore afford this prospect little weight.
30. The enforcement notice does not allege any physical changes to the building, and whether the notice is upheld or not, in the absence of any action to enforce the planning obligation, the building would be likely to remain. The use of the building for the purposes alleged has little implication for its appearance.

Accordingly, the use of the building does not conflict with Policy SWDP 21, or harm the character and appearance of the area.

Other matters

31. The appellant has explained how the main house is occupied by his extended family, and that the annexe provides accommodation to his son and his partner and child, who otherwise could not afford to buy their own home. The use as a residential annexe provides a social benefit, albeit that the weight that I afford it is modest.

Planning balance and conclusion

32. In respect of the use of the land as a garden, the only planning harm that results from it is the conflict with a single policy of the development plan, but the harm arising from that conflict is very small. It is outweighed by the benefit of putting the land to effective use and preventing it becoming overgrown and unsightly.
33. The use of the building for storage in connection with the dwelling again results in no planning harm other than the conflict with Policy SWDP 2. I attach little weight to the harm arising from that conflict, which is outweighed by the benefit of putting the building to beneficial use and minimising the risk of dereliction.
34. The use as a residential annexe also conflicts with Policy SWDP 2, but does not conflict with the objective of protecting the countryside and has very limited impact on the need to travel. The social benefits in providing family accommodation is a material consideration which outweighs the limited harm I have found, including the development plan conflict.
35. I therefore find that planning permission should be granted, subject to a condition to restrict the use of the residential annexe to ancillary accommodation in connection with the residential use of Nutcross Farm, in order to prevent use as a separate dwelling, which would conflict with Policy SWDP 2.
36. It is unnecessary to impose a condition requiring the development to be carried out in accordance with the submitted plans because the development has already been carried out in its entirety.
37. Accordingly, for the reasons given above, the s.78 appeal succeeds, as does the s.174 appeal under ground (a), and the notice is quashed.

Appeal under ground (g)

38. As the notice is quashed, it is unnecessary for me to deal with this ground of appeal.

Overall conclusions

39. For the reasons given above, the s.174 appeal succeeds in part on ground (d), and the notice will be corrected to delete the requirements relating to the use of the building for storage. The appeal on ground (a) succeeds, planning permission is granted subject to conditions, and subject to the corrections referred to above, the enforcement notice is quashed.

40. The s.78 appeal is allowed, and planning permission is granted, subject to the conditions set out in the formal decision above.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decision dated: 24 July 2020

by **JP Roberts BSc(Hons) LLB(Hons) MRTPI**

Land at: Nutcross Farm, Shrawley, Worcester WR6 6TS

Reference: APP/ J1860/C/19/3241167

Not to scale

Nutcross Farm, Shrawley, Worcester, WR6 6TS

