
Appeal Decision

Site visit made on 4 December 2020

by L McKay MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal Ref: APP/Y3940/W/20/3258134

**Walnut House, A338 Junction with Cholderton Road Newton Tony
Northeast to Cholderton Mini Roundabout, Cholderton SP4 0DH**

- 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 & Mrs Humphries against the decision of Wiltshire Council.
 - The application Ref 20/04308/FUL, dated 27 May 2020, was refused by notice dated 12 August 2020.
 - The development proposed is described as 'Demolition of a modern dilapidated 120 sqm swimming pool that is ancillary to Walnut House and replacement with a single storey 120 sqm granny annex ancillary to Walnut House and re-use of the existing separate 7sqm pump-room and changing room to a recycling store and bicycle store (x3 bikes), ecological features built into granny annex (x 2 bee bricks and x2 swallow houses), new soakaway c. 11m from the annex and all trees and landscape to be retained'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellants submitted amended plans during the appeal, which reduce the size of the curtilage of the proposed annex, alter the external materials and provide further detail on access, soakaway and sewage connections in response to queries raised by the Council. The amendments are minor in nature and would reduce the scale of the proposed development, and the Council has commented on them. Therefore, I consider that there would be no prejudice to any party by my accepting these plans.
3. The proposal has the potential to affect the River Avon Special Area of Conservation (SAC), therefore Natural England (NE) has been consulted on the appeal. The main parties have responded to NE's comments, and the appellants response included further information on sewage disposal. Although new information would not normally be accepted at a late stage of the appeal process, the appellants' submission addresses points made by NE which had not previously been raised, and the Council has had the opportunity to comment on it. Therefore, I have accepted this additional information.

Main Issues

4. The main issues are:

- i) whether the appeal site is an appropriate location for the proposed development having regard local policies on annexes and to the settlement strategy;
- ii) the effect of the proposed development on the character and appearance of the area; and
- iii) the effect of the proposed development on the River Avon SAC.

Reasons

Location

- 5. Policy H33 of the Salisbury District Local Plan (LP) permits proposals to create separate units of accommodation for dependent persons where they meet several criteria.
- 6. Due to the health needs of a member of the family living in Walnut House, additional care provision beyond existing daytime help is likely to be required in the near future, however the form of care, and whether it would be provided by a live-in carer, external care visits or by a family member, is not yet known. The appellants variously suggest that the annex may be used to provide accommodation for them, their family, a carer, friends, or for one of the appellants as a 'bolthole'.
- 7. Of these possible scenarios, only the appellants are likely to be able to be considered dependent persons, due to their age and health needs. It is however far from clear from the evidence before me that they would be the eventual occupants of the proposed annex. A carer employed to provide care services is unlikely to have a dependent relationship with the occupants of the existing dwelling. Nor has it been demonstrated that family or friends would be dependent persons. As such, there is no compelling evidence before me that the proposal would provide for dependent persons as required by Policy H33.
- 8. Furthermore, the proposed annex would be self-contained, sharing limited facilities with the existing dwelling, such as parking, access and potentially a septic tank. While the appellant suggests that meals, bills and the garden would be shared with Walnut House, the proposal includes a curtilage for the proposed annex, suggesting it would have its own garden, and there would be no obvious need for occupants to rely on the existing dwelling for their day-to-day needs. Consequently, and given the uncertainty about who would occupy the proposed annex, it would not be reasonable to impose a condition limiting occupancy to dependent persons only.
- 9. The proposal is also for a new detached building some 30m from the existing dwelling. While it is on land currently used in association with Walnut House, the separation distance means that it cannot reasonably be considered as an extension to it. The proposal also seeks to replace, rather than convert, the existing swimming pool building. Although the appellant suggests that the proposal would provide more suitable accommodation than conversion of the existing building, the Policy is specific in what will be permitted, which does not

- include new detached buildings. Therefore, the proposal would not be a type of development permitted by LP Policy H33.
10. The Council and appellants have made various submissions regarding whether the proposed building would be in the curtilage of Walnut House or not. This is however only relevant to Policy H33 if the proposal were for conversion of a building within the curtilage of the main dwelling. This proposal is for a new building, therefore even if it is within the curtilage of the dwelling as the appellants suggest, it would not comply with Policy H33. Therefore, there is no need for me to make a finding on the matter of curtilage.
 11. Nevertheless, it is relevant to consider the relationship of the proposed annex to the existing dwelling, given the Council's concerns that it could be separated off from Walnut House and occupied independently of it, as a separate dwelling. The proposed building would be of modest size, and significantly smaller than the main dwelling. Although not immediately adjacent to Walnut House, most of the site comprises an area of land accessed via the lawn to the rear of the dwelling via a paved path and pergola. The remainder is part of the adjacent field, separated from the developed part of the land by walls and a dense hedge. While it is somewhat dilapidated, most of the site is decoratively landscaped, giving it a domestic appearance markedly different to the open fields adjacent. Consequently, due to its physical and functional relationship with the existing dwelling and separation from the fields, the part of the appeal site now proposed to be developed appears to be part of the same planning unit as the main dwelling and used in association with it.
 12. There is an informal track across the agricultural fields behind the site, however it is not proposed to access the annex by this route, and there are already two points of access where the site can be reached from other parts of the garden of Walnut House. Therefore, the track would not be necessary for access, and its use could be precluded by planning conditions, including the removal of the existing pedestrian gate through the wall into the field. Therefore, it could be ensured that the proposal would be accessed via the garden of Walnut House with no separate access.
 13. Accordingly, although it would be self-contained, given the scale and physical relationship of the proposed annex to the main dwelling, there is no compelling evidence before me that allowing this appeal would create a new planning unit, or that the annex would be tantamount to a separate dwelling. It therefore materially differs from the appeal decisions at Lovelock Cottage and 1 Bluebell Cottages to which the Council has referred me.
 14. The use of the annex as a separate dwelling would require planning permission and be subject to local and national policies on the location of housing, which limit development in the countryside. As such, I do not agree with the Council's contention that it would be difficult to resist such a change in the future. Therefore, if it were otherwise acceptable, it would be reasonable to impose a planning condition to restrict the proposed annex to use ancillary to Walnut House, as is envisaged by LP Policy H33.
 15. The appeal site is in the countryside on the edge of Cholderton, which is defined as a small village in the Wiltshire Core Strategy (CS). CS Core Policy 1 sets out that development at small villages will be limited to that needed to help meet the housing needs of settlements and to improve employment opportunities, services and facilities. Core Policy 2 does not permit

development outside the defined limits of development, other than development at small villages limited to infill within the existing built area, and which complies with other criteria. These policies relate to all forms of development, irrespective of whether it is proposed within an existing residential plot or not.

16. The proposal would not form a new dwelling, so would not contribute to local housing needs. As ancillary accommodation, it would not demonstrably improve employment opportunities, services or facilities in the area. Walnut House is already on the edge of the village, separated from other dwellings by fields, and as such does not form part of the built-up area of the settlement. The proposed annex would be further from the village than the existing dwelling, and would not therefore be infill within the built-up area. Consequently, it would not be a type of development permitted in the countryside by CS Core Policies 1 or 2. Therefore, it would not comply with Core Policy 4, which requires development in the Amesbury Community Area to be in accordance with Core Policy 1.
17. As ancillary accommodation, the proposal is unlikely to result in any significant increase in traffic from the site, and does not propose a new dwelling in a countryside location. As such, I find no obvious conflict with the requirements of CS Core Policies 60 and 61 which seek to plan developments in accessible locations and promote sustainable transport alternatives to the use of the private car. Nor does the proposal conflict with National Planning Policy Framework (the Framework) policies on the location of housing.
18. Nevertheless, the proposal would conflict with LP Policy H33 and CS Core Policies 1, 2 and 4, which seek to limit new development in the countryside. As such, the appeal site is not an appropriate location for the proposed development having regard to local policies on annexes and the settlement strategy.
19. In reaching this conclusion I have had regard to the appellants' examples of other annexes approved by the Council. Those at Church Farmhouse and 5 Empire Road proposed conversion or extension of existing buildings, which are permitted by LP Policy H33. The proposal at Greenways was for an outbuilding in the rear garden, however the floorplan provided does not show it as self-contained, and I have not been provided with details of the circumstances by which this came to be approved. As such, it has not been demonstrated that any of these other examples are comparable with the appeal proposal, and they do not justify granting permission contrary to the development plan.

Character and appearance

20. The appeal site is within a Special Landscape Area. Most of the site is visually and physically separated from the adjacent fields by walls and hedging, which provide considerable screening of the existing building, and which are proposed to be retained. The amended plans omit the original proposal to extend the curtilage of the proposed annex into the field, therefore the proposal would now be contained within the confines of the existing developed area. The proposed annex would be of similar size to the existing swimming pool building and although relatively long, would have a low profile and few windows. Consequently, with the timber cladding proposed, it would appear similar to

- other rural outbuildings, and would be an appropriate design in this countryside location.
21. The proposal could result in domestic paraphernalia being placed on the appeal site, however that could already occur in the area around the swimming pool, and would not materially change the already domestic appearance of that part of the site. The remainder of the site is an open, grassed field which is no longer proposed to form part of the curtilage of the annex. Therefore, it would be reasonable to impose a planning condition to preclude the use of that part of the site as domestic garden, preventing the installation of such paraphernalia.
22. The Council has raised concern that the agricultural track might be used for emergency access, resulting in domestication of its appearance. Hard surfacing of the track is likely to require planning permission if it were needed for domestic rather than agricultural purposes, and use of that land for domestic purposes may also result in a material change of use. As I have found that there is already suitable access to the appeal site without using this track, I see no compelling reason why it would not be possible to resist such changes in the future. There is ample space for parking next to the garage of Walnut House, so no need to use the hardstanding outside the stables in the field adjacent to the site.
23. While any soakaway would have to be located within the field to achieve the required separation from the proposed annex, there is no substantive evidence before me that there would be any external sign of such provision. As such, it would have little impact on the appearance of the site or the landscape. Therefore overall, the proposal would not result in the encroachment of domestic development into the agricultural fields around the site and would not significantly affect the rural character of the area and the surrounding landscape.
24. Consequently, the proposal would not harm the character and appearance of the area, and I therefore find no conflict with CS Core Policy 57 and LP Policy C6, which require development to achieve a high standard of design and be sympathetic to the landscape.

River Avon SAC

25. The appeal site lies within the catchment of the River Avon SAC. The SAC is designated for several species that depend on pristine water quality typical of chalk rivers. The SAC is particularly vulnerable to the effects of pollutants such as phosphate and nitrogen, including those generated by new development adding waste to sewage treatment works (STW). NE advises that all new residential developments in the River Avon catchment are assumed to lead to increased phosphate being released into the catchment through increased sewage discharges, which would have a likely significant effect on the SAC.
26. The proposal is not for a separate dwelling, however as a self-contained unit it would be new residential development. It would provide permanent accommodation for an additional resident or potentially, given the various ways in which the appellant proposes it might be occupied, for a small household. As such, it is likely to be used much more intensively than the toilet and shower facilities in the existing building, which realistically are only likely to be used when the swimming pool was in use, or when in the garden. While the swimming pool building could be re-used for a gym or other such ancillary

- activity, again such uses are likely to be intermittent and would be unlikely to generate the amount of waste water that would result from a 1-bedroom unit of accommodation.
27. Therefore, there is no compelling evidence before me to support the appellants' claim that the proposed 1-bedroom annex would have a broadly similar effect to a gym, studio or utility room in terms of waste water. Consequently, due to the nature of the ancillary residential accommodation proposed, I consider that the proposal would be likely to create additional waste water compared to that already generated by Walnut House and its associated outbuildings.
28. It is proposed that the annex would utilise the existing septic tank of Walnut House. The additional load generated by the proposal would be likely to increase the frequency of emptying the tank, which the appellants have confirmed is discharged at a local STW. As such, the proposal would be likely to add to the waste requiring treatment at the STW, and consequently the sewage discharge to the river catchment.
29. The appellants suggest that other annexes have been assessed by the Council without reference being made to the River Avon SAC and that annexes and house extensions have been treated as de minimis. The Council explains that this is because they do not add another household or more phosphate loading into the river system than the existing dwelling. This is a different situation to the appeal proposal, where I am unable to reach the same conclusions based on the evidence before me. Furthermore, in the example given by the appellants for an annex at Greenways, there is no indication that a self-contained unit of accommodation was proposed, and as such it is not comparable to the scheme before me.
30. Accordingly, it has not been demonstrated that the type of ancillary accommodation proposed would not result in increased waste water, and therefore an increase in nutrients entering the river system. Consequently, I cannot exclude the possibility that the proposal, either alone or in combination with other development in the area, would have a significant effect on the SAC. Therefore, it is appropriate to take a precautionary approach and it is necessary for me, as the competent authority, to conduct an Appropriate Assessment in relation to the effect of the proposed development on the integrity of the SAC.
31. The appellants have suggested that a package treatment plant could be used as an alternative means of sewage disposal for the proposed annex. Details of a model have been given which would be 95.1% effective in removing phosphorus from the waste, and 87% effective in removing nitrogen. However, as the appellants recognise, it would not be 100% effective in removing either nutrient, and therefore would still result in some increase in nutrients entering the river catchment. As such, it would not achieve nutrient neutrality and therefore would not adequately mitigate the effects of the proposal on the SAC.
32. The Council has confirmed that an Interim Delivery Plan which outlined mitigation measures to reduce the impacts of phosphates from new development on the SAC has now expired, and in any case due to NE concerns, could no longer be relied upon to adequately mitigate those effects. Work is underway to deliver collective mitigation measures within parts of the catchment area, however no contracts have yet been confirmed, and in any event those under discussion would not cover the sub-catchment within which

the appeal site lies. Furthermore, although expected in the near future, NE has not yet issued guidance on use of package treatment plants.

33. There are therefore no agreed projects or mitigation measures before me that would address the effects of the proposed development on the SAC. I am therefore unable to conclude that the proposal would not result in a significant harmful effect on the integrity of the SAC. Consequently, the proposal would conflict with CS Core Policy 50, which sets out that any development that would have an adverse effect on the integrity of a European nature conservation site will not be in accordance with the CS; and Core Policy 69, which requires that where additional sewage discharges to a STW cannot be accommodated without measures to offset phosphate loading, development will be required to undertake proportionate measures to demonstrate that proposals would have no adverse effects on the SAC.

Planning Balance

34. The site is within Cholderton Conservation Area (CA), which draws considerable significance from the historic buildings and pattern of development in the village, and the countryside setting of the settlement. The existing pool building is somewhat dilapidated, but due to the existing screening, it has a minimal impact on the surrounding area and as such does not detract from the character and appearance of the CA. Its removal would not therefore result in any significant benefit to the CA. Due to its scale, materials, design and degree of screening, and given its siting on land already associated with a dwelling, the proposed annex would also have very little visual impact and would not encroach further into the open countryside than existing development. As such, it would preserve the character and appearance of the CA, and thereby its significance. This is however of neutral consequence in the planning balance.
35. The proposal would deliver an accessible and adaptable building of sustainable design, and would not adversely affect the living conditions of neighbours or highway safety. There is however no substantive evidence before me that local builders and materials would be used, and as such the economic benefits resulting from construction would be very limited, and therefore carry very limited weight. Biodiversity enhancements are proposed, however these would be small-scale and would only result in minor ecological benefits, so carry limited weight.
36. The proposal would however conflict with CS and LP policies which seek to limit developments in the countryside to those which contribute to the vitality of the communities, which are consistent with the policies of the Framework. Nevertheless, it would replace an existing building on land already used in association with a dwelling, and would not result in development encroaching further into the countryside than at present. Therefore, the resulting harm would be limited. In these circumstances, I give the conflict with these policies only modest weight.
37. The proposal would also conflict with CS policies in respect of the SAC. Framework paragraph 175 requires significant harm to biodiversity to be avoided, and directs that where such harm cannot be adequately mitigated, or as a last resort compensated for, then planning permission should be refused. The conflict with these policies therefore carries very substantial weight against the proposal.

38. The proposed annex would provide accommodation that could meet the future needs of the appellants, resulting in private benefits. However, while I recognise that the family has increasing care needs, and do not wish to use a care home, there is considerable uncertainty about who would occupy the proposed annex and whether it would actually be for a resident carer. Furthermore, it has not been demonstrated that a self-contained unit of accommodation is needed to meet those care needs.
39. The appellants suggested in correspondence with the Council that the existing dwelling could provide space for a carer, with the appellants living downstairs for several years. It is therefore unclear why this has now been rejected as an alternative to a new building in the countryside. Furthermore, it does not appear that options for extension of Walnut House have been fully assessed, as only extensions of the same size as the proposed annex appear to have been considered, without explanation of why so much additional accommodation would be needed if it were part of, and shared facilities with, the main house. While these other options may not be the appellants' preference, nevertheless it has not been demonstrated that their needs could not be met in other, policy compliant ways.
40. I have had due regard to my duty under the Equality Act 2010, and recognise that dismissal of this appeal could delay the provision of accommodation for a resident carer, with consequent impacts on the appellants' health and wellbeing. However, there is no substantive evidence before me that the family's care needs in the short and medium-term cannot be met by external carers or using existing accommodation, or that their future care needs cannot be met by means other than the appeal proposal, whilst meeting their strong desire to stay living on their property. Therefore, I can give their care needs only modest weight, and they do not outweigh the harm that I have identified.

Conclusion

41. Overall, taking account of the Framework and the above considerations, including the benefits of the proposal, I find that material considerations do not indicate that planning permission should be granted for the proposed development, which conflicts with the development plan. The appeal is therefore dismissed.

L McKay

INSPECTOR