



Appeal Decision

Site visit made on 30 November 2020

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/Q3115/W/20/3247466

Bellehatch Park, road between Mays Green and Chalk Hill, Harpsden, Henley-on-Thames RG9 4AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Marina Caprotti against the decision of South Oxfordshire District Council.
 - The application Ref P19/S2024/HH, dated 3 December 2012, was approved on 3 February 2020 and planning permission was granted subject to conditions.
 - The development permitted is erection of single storey pavilion adjacent to tennis court (within Bellehatch Farm as per amended plans received 04 December 2019) (As per tree protection details uploaded 30 January 2020).
 - The condition in dispute is No 5 which states that: *'The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Bellehatch Park.'*
 - The reason given for the condition is: *'As the separate occupation of the accommodation would represent an undesirable sub-division of the property and result in inadequate standards of amenity and privacy in accordance with Policy H13 of the South Oxfordshire Local Plan 2011.'*
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Decision

1. The appeal is allowed and the planning permission Ref P19/S2024/HH for erection of single storey pavilion adjacent to tennis court (within Bellehatch Farm as per amended plans received 04 December 2019) (As per tree protection details uploaded 30 January 2020) at Bellehatch Park, road between Mays Green and Chalk Hill, Harpsden, Henley-on-Thames RG9 4AN granted on 3 February 2020 by South Oxfordshire District Council, is varied by deleting condition No 5.

Background and Main Issue

2. The Council has granted planning permission subject to conditions for the erection of a pavilion at the appeal site, next to an existing tennis court. This development has not yet started. The appellant, who was also the applicant, objects to the imposition of condition No 5, as referred to in the banner above, and seeks to have it removed. In its appeal statement the Council has given a new reason for the continued imposition of condition No 5 unmodified:

'As the use and / or occupation of the accommodation for commercial purposes would represent an undesirable use, adversely affect the amenities of residents in the vicinity, in accordance with Policies H13 and R4 of the South Oxfordshire Local Plan 2011.'

3. In the context of this background the main issue is whether the condition is necessary and reasonable having regard to the use of the pavilion.

Reasons

4. The appeal site is in a relatively isolated location in the countryside and includes Bellehatch Park House (where the appellant lives) which is a reasonably large Grade II listed building in landscaped grounds, bordered on its north side by a house called The Cottage and some other buildings. The appeal site is also in the Chilterns Area of Outstanding Natural Beauty. Having regard to the approved plans, the permitted pavilion is a reasonably modest sized building and, as I also saw at my site visit, it would be appropriately sited and designed for use as an open-fronted, covered seating area in connection with the tennis court.
5. I note that the appellant applied for planning permission on the basis of a 'householder' planning application type, which includes development for 'outbuildings' within the curtilage of a house. As part of the submitted application the appellant stated that the pavilion would be 'a new outbuilding to serve the tennis court'.¹
6. During the Council's consideration of the application the appellant confirmed in writing² that the pavilion would be 'for domestic use only' and that a 'residential curtilage... was extended over a 100 years ago beyond the location of the pavilion'. In making its decision to grant planning permission the Council's officer report found that the pavilion was 'an ancillary outbuilding within the curtilage of the listed country house' and, having visited the site, I agree. I also note that in this appeal the appellant has stated that the pavilion is intended to be 'ancillary' to a house, 'purely to support the existing... tennis court in a use incidental to the occupation of' a house and that 'commercial uses are not proposed'.³
7. I appreciate that in making its decision to grant planning permission and impose condition No 5, and in its case in this appeal, the Council is concerned that the pavilion might be used as a separate dwellinghouse or for commercial purposes (as, or in connection with, a tennis club). However, even if, as the Council suggests, the tennis court is on land that is not owned by the appellant, the Council has not provided any substantive evidence that either of these two uses is intended by the appellant or that the tennis court is nonetheless not in a residential curtilage.
8. On the evidence that is before me in this appeal, neither of these two uses has been sought by the appellant and are not therefore before me. In addition, the planning permission that has been granted by the Council, including the terms of the application, is for development described as a 'pavilion adjacent to tennis court' and the red line of the application site considered by the Council was amended by the appellant to include the tennis court. It is a building within a residential curtilage for a purpose and use as a pavilion (within an ordinary meaning of 'pavilion' in the context of this appeal) incidental to the occupation of a house.

¹ Appellant's Planning Statement.

² By email 5 September 2019.

³ Appellant's Appeal Statement.

9. Moreover, if the permitted pavilion is not built or used as such, or if there is a future material change of use to create a separate dwellinghouse or a commercial use, then another grant of permission would be required, and the building or use would be at risk of enforcement action if such permission is not granted. I have also had due regard to the development plan policies referred to by the Council for imposing and seeking to re-impose condition No 5. I am satisfied that the potential harm that is referred to in these policies is capable of being remedied by these other means.

Other Matters

10. The planning permission does not include any physical works to Bellehatch Park House and the pavilion would be reasonably modest in scale and sited an appreciable distance away from the house to one side, beyond other outbuildings and structures, and screened by trees and hedges. The pavilion would not therefore affect the special architectural or historic interest of this listed building or its setting. Consequently, there would be no harm to, or loss of, the significance of this designated heritage asset and the planning permission therefore preserves the listed building and its setting.
11. For similar reasons, and despite its distance from the house, the pavilion would be a limited development and have no material visual or physical connection to the wider countryside. Consequently, it would cause no harm to the landscape or scenic beauty of this part of the Chilterns Area of Outstanding Natural Beauty, or of the AONB overall.

Conclusion

12. Considering the above and having regard to the relevant tests of paragraph 55 of the Framework and related Planning Practice Guidance,⁴ I find that the condition in dispute does not serve a useful planning purpose and is not necessary or reasonable. For the reasons given, the appeal succeeds.

Robin Buchanan

INSPECTOR

⁴ Paragraph ID: 21a-003-20190723.