

Appeal Decision

Site visit made on 13 May 2021

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal Ref: APP/M2270/D/21/3268096

Deepwell, Poundsbridge Lane, Penshurst, Tonbridge, Kent TN11 8AE

- 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 Wakeman against the decision of Tunbridge Wells Borough Council.
 - The application, Ref. 20/01967/FULL dated 15 July 2020 was refused by notice dated 16 November 2020.
 - The development proposed is a single storey extension of workshop outbuilding to incorporate a 2 bay garage, cycle store and annexe.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey extension of a workshop outbuilding to incorporate a 2 bay garage, cycle store and annexe at Deepwell, Poundsbridge Lane, Penshurst, Tonbridge, in accordance with the terms of the application, Ref. 20/01967/FULL, dated 15 July 2020 and subject to the following conditions:
 - 1) The development to which this permission relates shall begin not later than the expiration of three years beginning with the date of this Decision;
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. Series M3101-: Plan Nos. 01; 02; 04; 05;
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building;
 - 4) The extension to the outbuilding as hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Deepwell, Poundsbridge Lane, Penshurst.

Main Issue

2. The main issue is whether the use of part of the extended building for living accommodation would be inappropriate development in the Green Belt; unsustainable development and harmful to the character and appearance of countryside which forms part of the High Weald Area of Outstanding Natural Beauty ('the AONB').
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Reasons

3. The planning officer's report explains that the application (as described in the final bullet point of the above header) is a re-submission of the previously approved application ref. 19/01681/FULL. The external changes are the same as proposed in that original application, but previously an internal workshop was proposed to the rear part of the building and a three bay garage was proposed to the front portion. As a result, the difference lies with the annexe living accommodation which did not form part of the previously approved application but now occupies the workshop floor space.
4. The Council's legal duty as a Local Planning Authority is to determine applications on the basis of the development applied for as set out on the application form. In many cases Councils alter the description to a form of words that they consider more accurately describes the proposal. If this is done with the written agreement of an applicant, and I note that this was the case here, they remain within their powers. The fact that more often than not the altered description may be more apt and that applicants are happy to go along with it is neither here nor there.
5. In this instance the Council has gone a significant step further and to all intents and purposes determined the application on the premise it is almost inevitable that at some point, albeit possibly by a future owner of Deepwell, a future application for a separate dwelling will be made and there would be little or no choice but to approve it.
6. In support of this approach it is firstly argued that a *'legal agreement or condition which restricts (the building's) use is unlikely to be appropriate because it would be imposing unreasonable controls over a structure which can easily function as a separate dwellinghouse. A planning permission runs with the land and it would be difficult to justify the retention of such restrictions in the future, if challenged at appeal'*.
7. However, I do not accept this argument. The Government's online Planning Practice Guidance says that when used properly, conditions can enable development to proceed where it would otherwise have been necessary to refuse permission. The Council, through permission ref. 19/01681/FULL (see paragraph 3) above), have accepted that the siting, size, design and external appearance of the extension are all appropriate in this location.
8. Furthermore, in referring to inappropriate development in the Green Belt, unsustainable development in the countryside and harm to the character and appearance of the AONB the Council has cited three policy strands that are long established and well supported at a national and local levels and on appeal. I consider it likely that these issues will continue to be relevant for the decision-maker (be it the Council or an appeal Inspector) to consider in the appraisal of any application in the foreseeable future. I also noted on my visit the absence of sightlines for vehicles leaving the driveway, which whilst not relevant for the previous and current applications, may well be a consideration in any application for an additional dwelling.
9. The second main strand of the Council's case stems from Policy H11 of the Tunbridge Wells Local Plan 2006. Two of its provisions are potentially relevant: firstly the requirement for subordination to the host building and not having an

adverse effect on its setting, and secondly whether the extension (in this instance a plot division and the adaptation of the extended garage) would lend itself to future sub-division to form a separate dwelling. However, it was in connection with application ref. 19/01681/FULL that the Council should have raised these matters and they did not do so, as evidenced by the permission. I do not regard it as reasonable to raise them now, as the partial use of the floor space for accommodation does not make the building any more tantamount to use as an independent dwelling than in the previous application.

10. Be that as it may, I am satisfied that in the circumstances of this case the extended garage would be proportionate to the host dwelling and meet the first stipulation of Policy H11 as well as Policy MGB1 and paragraph 145 of the National Planning Policy Framework 2019 (both relating to the Green Belt). As regards the potential for plot separation and adaptation of the outbuilding, there are likely to be problematic issues of the aforementioned sightlines; a shared drive; proximity to the host building's conservatory; land levels, and the steep roof pitch / narrow roof span.
11. This is not entirely to deny some potential for a conversion but the need for a permission and the policy safeguards remain. In the event, the appellants have a genuine reason for the accommodation, but even without this both they and any future owners of Deepwell would have a facility of guest accommodation and future owners also for a 'Granny annexe'. These are reasonable and commonplace ancillary residential facilities that 'run with the land'.
12. Overall, I conclude that the use of the term '*by virtue of (the building's) ability to function as a separate dwelling*' in all three of the reasons for refusal to be flawed. They fail to take into account the extant permission for the building's extension and do not reasonably apply local and national planning policies mentioned in the Notice of Refusal to the proposal as submitted and described on the application form.
13. I shall therefore allow the appeal. A compliance with a plans condition is required for certainty and in the interests of proper planning, whilst a condition stipulating matching external materials will maintain visual amenity. As regards the all important preclusion of change of use condition I shall use model condition no. 47 now attached to the Planning Practice Guidance.

Martin Andrews

INSPECTOR