



Appeal Decision

Site visit made on 20 October 2021

by K Winnard LL.B Hons Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021.

Appeal Ref: APP/V0510/D/21/3282048

Otterbush Farm The Hythe Little Downham CB6 2DT

- 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 Mrs Alison Hayes against the decision of East Cambridgeshire District Council.
 - The application Ref 21/00689/FUL, dated 30 April 2021, was refused by notice dated 25 June 2021.
 - The development proposed is the erection of a home gym and annex building.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a home gym and annex building at Otterbush Farm The Hythe Little Downham CB6 2DT in accordance with the terms of the application, Ref 21/00689/FUL, dated 30 April 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P001, Location Plan and Block Plan.
 - 3) Prior to the commencement of any construction works, samples of the materials to be used for the external construction of the annex building hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Thereafter only the approved materials shall be used.

Procedural Matters

2. The appeal documentation describes the annex as multi-functional space which can be adapted to meet the changing needs of current and future occupiers including the potential use of the ground/first floor as a home office and the adaptation of the ground floor as accommodation for elderly relatives. The planning application indicates that the annex building is intended to provide ancillary accommodation for the appellant's son and a gym, although the Sustainability Statement submitted with the planning application also describes the annex as designed for future adaptation to allow for home working, guest accommodation and a gym. I note the information about future adaptability of the annex building. For the avoidance of doubt, I have

determined this appeal on the basis of the planning application as described and the plans submitted to the Council.

3. Since determination of the planning application, the appellant has submitted an Unilateral Undertaking (UU). The UU would ensure that the use of the annex would be ancillary to the main dwelling and that the annex would not be sold or leased separately. The Council has been provided with a copy of the UU and has provided comments to it. I have taken account of the UU and the comments as part of my consideration of the appeal.

Main Issue

4. The main issue is whether or not the proposal would constitute the creation of a separate residential unit and if so whether this would be contrary to both local and national policy in relation to new dwellings in the countryside.

Reasons

5. The appeal property, Otterbush Farm, is a large detached dwelling sited in spacious grounds. Garages and outbuildings, adjacent to a driveway, are sited within its residential curtilage, separated from the rear garden area of the dwelling by a stone wall. Access to the substantial equine facilities adjoining the residential curtilage is also derived from this driveway. The annex building would comprise a gym and small kitchen with bedroom/lounge and shower room above in the roof space.
6. The East Cambridgeshire Local Plan (2015) Policy GROWTH2 (Local Plan) restricts development to specified exceptions providing that there is no significant adverse impact on the character of the countryside and other Local Plan policies are satisfied. The list of exceptions includes the extension of dwellings within the countryside. Whilst not specified within Policy GROWTH2, the Council state that in cases where the extension is not attached to the house there should be a clear reliance on the host dwelling through a lack of basic amenities at the annex building, for there to be a functional relationship between the two buildings.
7. The distinctive characteristic of a dwelling house has been described as its ability to afford to those who used it the facilities for day to day private domestic existence.¹ However in the case of a building for use as an annex, subsequent case law has held that whether the use of an annex would involve the creation of a separate planning unit and independent unit of occupation will be a matter of fact and degree in any particular case. Even if the accommodation for a relative provides facilities for independent day to day living, it would not necessarily become a separate planning unit from the main house; instead it would be a matter of fact and degree.²
8. Each case must therefore be determined on its own individual merits. In this instance the annex would not be dependent on the main dwelling for dining or living facilities and it would be capable of operating independently from it.
9. However, the annex would be sited at the end of the driveway between the stone wall and the LPG tanks located to the side of one of the garages. Its front elevation and entrance door would face the driveway. As such it would enclose

¹ Gravesham BC v SSE and O'Brien 1983

² Uttlesford DC v SSE & White 1992

the western part of the driveway so creating a courtyard effect with the garages/outbuildings and stone wall. In my view the annex building would be seen as an integral part of the residential curtilage in this location. Moreover, the accommodation would share facilities with the main dwelling in the form of pedestrian and vehicular access, car parking, the garden and utility services.

10. Whilst the annex would be located some 29 metres away from the main dwelling, it would be sited alongside the garages/outbuildings within the residential curtilage. It's side elevation with large feature windows, would face the rear garden, which would be shared. Given the siting and layout, such sharing arrangements would be unlikely to be satisfactory for the residents of Otterbush Farm if there was no familial connection between them and the occupants of the annex. Moreover, the division of the overall curtilage into two distinct plots and the formation of a separate parking area and/or access would in my view not be easy to achieve. As a consequence, I am not satisfied that the location would necessarily encourage use as a separate dwellinghouse, notwithstanding the distance from Otterbush Farm.
11. On the information before me and from my on site observations as set out above, I am satisfied that there would be a functional relationship between Otterbush Farm and the annex. I acknowledge the Council's concern that the building could be used as a separate dwelling, but that is not the proposal before me. If the annex building is not built or used as proposed, or if there is a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required, and the building would be at risk of enforcement action if such permission were not granted. Moreover the use and occupancy of the building could be controlled by a suitably worded planning condition, or planning obligation, which would ensure the use of the annex would be ancillary to the main dwelling.
12. The completion of the unilateral undertaking means that in addition to the required ancillary use of the annex there is a further level of control to prevent the creation of a separate dwelling. The obligations in both these regards are clearly necessary to make the proposed development acceptable in planning terms; are directly related to the proposed development and fairly and reasonably related in scale and kind. Accordingly the obligations meet the relevant legal and national policy tests. In these terms I am satisfied that I can take these planning obligations into account and that they provide an effective mechanism to control the use and status of the annex.
13. Reference has been made to other developments approved by the Council and other appeal decisions. Whilst there are similarities with the issues raised, it appears to me that each case was predominantly considered on its individual merits and circumstances, and taking account of other considerations. I have given these approvals limited weight, but for the reasons outlined above I have considered this appeal on its own merits in light of the information before me.
14. I note that the Council has raised no concerns with regard to the residential amenity of nearby occupiers, nor in relation to the visual amenity of the development and any effect on the character and appearance of the area. Given the siting and design of the annex building and its distance from the public realm I would agree with these assessments.
15. For the above reasons, I conclude that the proposed development would not comprise a new self-contained dwelling. Thus, as an annex to the existing main

dwelling, the proposal would not be contrary to Policy GROWTH2 of the Local Plan, which restricts development in the countryside to specified exceptions.

16. The Council cite both Policy ENV2 (Design) of the Local Plan and the East Cambridgeshire District Council Design Guide Supplementary Planning Document (Design Guide), in the reasons for refusal, but it is not clear which part of Policy ENV2 the Council consider the proposal to be contrary to. I note that the proposal is accepted by the Council as being in accordance with it in terms of design, character and appearance, living conditions and residential amenity. I would concur with these assessments and accordingly conclude that the proposal would not conflict with either Policy ENV2 or the Design Guide in that it would, amongst other things, relate sympathetically to the local area and would not have a significant detrimental effect on the residential amenity of nearby occupiers. Given also my conclusions that the proposal would not create a new dwelling it is not necessary for me to consider whether it would be contrary to local and national policy prohibiting new dwellings in the countryside.

Conditions

17. I have specified the approved plans and time limits as this provides certainty. Samples of the external materials need to be approved in the interest of the character and appearance of the area. As there is a planning obligation to ensure that the annex building remains ancillary to the main house, it is not necessary to replicate this control within the conditions.

Conclusion

18. Accordingly and having regard to all matters raised, I allow the appeal in accordance with the formal decision above.

K Winnard

INSPECTOR