



Appeal Decision

Site visit made on 2 November 2021

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/J1860/W/21/3277370

Aymestrey Court, Crown East, Worcester WR2 5TR

- 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 PM Brooks against the decision of Malvern Hills District Council.
 - The application Ref 21/00154/CU, dated 21 January 2021, was refused by notice dated 30 April 2021.
 - The development proposed is conversion of former gymnasium to dependent relative unit (granny annexe).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The plans submitted with this appeal and on which the Council determined the planning application include a proposed sun room extension and an area for parking three vehicles. The appellant has confirmed that, if necessary, both the sun room and the parking area could be removed from the scheme. However, a scheme without these elements is not before me. Moreover, the appeal process should not be used to evolve a scheme¹. Consequently, I have determined the appeal on the basis that the sun room and parking area are part of the appeal scheme.

Main Issues

3. The main issues are:
 - whether or not it has been demonstrated that the proposal would have an acceptable effect on the character and appearance of the surrounding area, having particular regard to trees;
 - whether or not it has been demonstrated that the proposal would be acceptable with respect to its effect on biodiversity;
 - whether or not the proposal would be tantamount to the creation of an independent dwelling; and
 - if the proposal would comprise an independent dwelling, whether its location would be acceptable with regard to access to services and facilities, along with minimising the need to travel and offering sustainable travel choices.

¹ Procedural Guide - Planning appeals – England (March 2021): Paragraph M2.1

Reasons

Character and appearance

4. The former gymnasium (the appeal site) is positioned adjacent to a recently constructed garage block, accessed from the driveway to Aymestrey Court. It therefore appears separate to the main houses but is not in an isolated position. The appeal building has a functional appearance with its corrugated metal walls and roof. This differs considerably from the traditional architecture of Aymestrey Court, as well as from the adjacent brick built garage block. Nevertheless, and despite its relatively poor state of repair, it has a pleasing simplicity of form.
5. Within the wider grounds of Aymestrey Court, individual and groups of trees are a defining positive feature of its parkland setting. The appeal site is located adjacent to an area of trees that are outside the application boundary but in close proximity to it. It is not disputed between the main parties that the trees are relatively young. The type of trees is not definitive within the appeal evidence, but they appeared on my site visit to comprise a mix of predominantly evergreen and some deciduous trees. These provide screening which contributes to the pleasantly secluded feel within the appeal site and its surroundings. Consequently, whilst individually not of particular note, and the site is not subject to a specific landscape designation, collectively these adjacent trees make a positive contribution to the character and appearance of the area.
6. Repairing the deteriorating external fabric of the appeal building, done sensitively, would have a positive effect on the character and appearance of its surroundings. Were I to allow the appeal, details of external materials and finish could reasonably be secured by condition. The main change to the external appearance of the building would be the addition of the sun room. This would have a simple form and be of a scale that is subservient to the appeal building. Therefore, it would not appear as an incongruous addition. Moreover, its position on the opposite side of the building to the main access drive, and screened by adjacent trees, would considerably limit the extent to which it would be visible from the surrounding area.
7. The sun room is proposed to be constructed on a concrete raft foundation, for which excavation is said to be limited, to minimise impacts on trees. However, details relating to this have not been provided. Moreover, no tree survey was provided at planning application stage or with this appeal to confirm the likely root protection area of adjacent trees, their sensitivity to works associated with construction of the concrete base and any excavations required for site drainage. A sensitive approach to construction of the sun room could in theory be secured by condition. However, I am mindful of the statutory duty under section 197 of the Town and Country Planning Act 1990, to ensure conditions make adequate provision for the preservation of trees. Given the proximity of trees to the proposed sun room and the absence of detail on foundations and tree sensitivity, I cannot be sufficiently certain that a condition would protect the future health and longevity of these trees.
8. The physical works to the building would be acceptable from a design perspective. However, for the reasons given, I conclude that it has not been demonstrated that the proposal would have an acceptable effect on the

character and appearance of the surrounding area, having particular regard to trees.

9. It would therefore be contrary to policy SWDP21 of the South Worcestershire Development Plan (2016) (Local Plan) which amongst other matters, requires that proposals complement the character of the surrounding area, including its landscape quality. It would also be contrary to Local Plan policy SWDP25, which requires that proposals demonstrate that they integrate with the character of the landscape setting. It would similarly be contrary to paragraph 130 of the National Planning Policy Framework (2021) (the Framework) which requires that proposals are sympathetic to local character, including the landscape setting.

Biodiversity

10. Local Plan policy SWDP22, part F, requires that proposals are designed to enhance biodiversity on site, as well as beyond the site boundary, wherever practicable. The Preliminary Ecological Appraisal submitted with the appeal indicates that the existing garden area of the appeal site comprises plants that are common and widespread. It concludes that the proposed planting of a native hedge around the perimeter of the garden would increase biodiversity on site. On the evidence before me, and were I to allow the appeal, I am satisfied that a condition could reasonably be applied to secure implementation of such a scheme.
11. However, given the potential harm to adjacent trees as reasoned above, I cannot be sufficiently certain of the biodiversity effects of the appeal scheme as a whole. Therefore, I conclude that it has not been demonstrated that the proposal would be acceptable with respect to its effect on biodiversity. In the absence of robust evidence to the contrary, the proposal would not comply with Local Plan policy SWDP22, part F. For similar reasons, it would also be contrary to paragraph 174 of the Framework which aims to ensure developments enhance the natural and local environment and deliver net gains for biodiversity.

Whether or not tantamount to an independent dwelling

12. The judgement on *Uttlesford DC v SSE & White [1992]* confirmed that whether or not accommodation amounted to a separate planning unit from the main dwelling would be a matter of fact and degree. Aymestrey Court has been divided into a number of separate dwellings, with the host dwelling (No 4) located towards the opposite end of the building to the appeal site. House numbers 5 and 6 are located between the appeal site and No 4, albeit owned by the appellant, along with the garage block, tennis court and appeal site. The proposal would be accessed off the same main driveway as No 4, in common with other houses at Aymestrey Court. Whilst the appeal site does not have a close visual connection with the living accommodation at No 4, it is closely located to its garage block and parking area.
13. The proposal would be subservient in scale to No 4, and not a substantial property in its own right. Nonetheless, it would provide all of the facilities necessary for day-to-day living. This would include a bedroom, en-suite bathroom, separate WC, sitting room and a kitchen. Although access off the main driveway would be shared with the garage block, the accommodation would be provided ostensibly on a separate plot, with its own private garden

and separate bin storage area. Together with the addition of the extra living accommodation provided within the proposed sun room, it would be conducive to entirely independent living for its future occupants.

14. Save for drainage which would not be shared, I note that the proposal would share its utilities and services with No 4, taken via the adjacent garage block. The appellant has indicated that the three parking spaces could be shared, albeit it appeared that ample parking already exists for the occupants of No 4 in front of the garage block. In any event, these factors alone do not indicate that the accommodation would be of an ancillary nature. That Aymestrey Management Company is said not to permit independent services to the appeal site does not, of itself, preclude its use as an independent dwelling.
15. I understand that the occupants of the appeal scheme would initially only be reliant on the occupants of No 4 for laundering of clothes, but that the level of support they would require from No 4 would likely increase in coming years. I have had regard to the letter submitted to this appeal concerning the medical needs of the appellant's relatives, and other details regarding their specific circumstances, including in light of Covid-19. Whilst I have sympathy with their position, the accommodation would be self-contained and permanent, enduring beyond their current circumstances. The appellant suggests that the appeal scheme would remove the need to extend No 4, however it is also reasoned that an extension to that property would not be practical or feasible in any event. The apparent absence of alternative locations for such accommodation does not materially alter my assessment of the scheme.
16. I note the appellant's reference to other planning permissions for ancillary accommodation that were granted by the Council, as support for their case that proposals of a similar nature have been approved with conditions to limit their use to ancillary. However, having regard to the officers' reports in respect of these, where they have been provided, I note that there were other considerations that informed the judgement made by the Council in those instances. For example, the proximity of the ancillary building to the main house at Freemans Place (Council Ref 18/01642/HP) was considered to be so close that creation of an independent dwelling would harm the living conditions of the existing occupants, whereas in contrast, occupation of the accommodation on an ancillary basis would not.
17. More generally within those other planning permissions there appears to have been a much closer relationship between the host dwelling and the ancillary accommodation, either physically or in terms of greater sharing of facilities. As such, imposition of a condition to restrict their use to ancillary could reasonably be regarded as appropriate in those circumstances. In any event, the full circumstances of those proposals are not before me and I have considered this appeal on its own merits.
18. The appellant also makes reference to an appeal decision at Nutcross Farm, Shrawley², in which planning permission was allowed for a retrospective ancillary storage building including a residential annexe. As a matter of fact and degree the Inspector concluded that the proposal was capable of providing ancillary residential accommodation, and made reference to factors such as the shared garden, no separate curtilage, no fully functioning kitchen and shared parking. In contrast, the appeal scheme before me would provide a separate

² Appeal Reference: APP/J1860/W/19/3238022

private garden and internal space of a nature and scale that would provide fully independent living accommodation. The considerable differences in the nature of the accommodation justify a different approach here.

19. A further appeal decision is referenced by the appellant at Orchard House, Westwood Park³. That proposal is considered to be ancillary accommodation but appears to have comprised a greater degree of shared facilities, including a shared kitchen. Consequently, it does not alter my assessment of this appeal.
20. Concluding on this matter, I appreciate that the proposal is submitted as one that would provide ancillary accommodation in the form of a single bedroom granny annexe. However, on balance, and for the reasons given, it would be tantamount to an independent dwelling. A condition to restrict its use to one that is ancillary to No 4 would not be enforceable in these circumstances, there would likely be no appreciable change whether it was occupied as ancillary accommodation or an independent dwelling.
21. It would therefore be contrary to Local Plan policy SWDP2, part C, which seeks to limit development in the open countryside, allowing for certain exceptions. The scheme is not advanced as one that satisfies any of these exceptions, not being accommodation for rural workers, rural employment, a rural exception site, or a building for agriculture and forestry. It is similarly not submitted as a replacement dwelling. Nor does it comprise a house extension, or one that would be specifically permitted by any other SWDP policy.
22. Given the extent of the accommodation provided and the very limited sharing of facilities with No 4 the proposal would also be contrary to the South Worcestershire Design Guide Supplementary Planning Document (2018) which generally seeks to limit the conversion of outbuildings outside of settlement boundaries where they could effectively create new independent dwellings. Moreover, even were the scheme purely ancillary accommodation, that would not alter my finding of harm by virtue of potential harm to trees.

Location with regard to access to services and facilities

23. In respect of the suitability of the location of the site for an independent dwelling, Local Plan policy SWDP2 as a whole seeks to ensure a sustainable pattern of development. It focusses new development on larger settlements where there is greater access to local services, and consequently less reliance on travel by private car and associated emissions. Notwithstanding the bus stops on the A44, the frequency of services from which is not before me, given the countryside location of the site and relatively limited nearby facilities, future occupants of the proposed development would in all likelihood be highly dependent on travel by car for day to day services and facilities. There may be future urban extensions that alter the accessibility of the site in due course, however this remains uncertain on the evidence before me.
24. Consequently, in comprising a proposal that is tantamount to an independent dwelling, it would not be acceptable in this location, having regard to access to services and facilities, along with minimising the need to travel and offering sustainable travel choices. It would therefore be contrary to Local Plan policy SWDP2 objectives, and with relevant elements of the Framework.

³ Appeal Reference: APP/H1840/W/21/3271005

Other Matters

25. Were I to allow the appeal, there is no robust evidence before me to indicate that the appeal site could not be made suitable for individuals with mobility concerns. The proposal would make use of an existing building, and on the evidence before me I am satisfied that the building would be structurally suitable for conversion. In any event, such matters would be addressed through other regulatory provisions. Given my reasoning in the third main issue there would be some benefits from the scheme, in terms of creating additional accommodation, employment and local trade. I see no reason to indicate that it would harm the living conditions of nearby residents. However, these matters do not outweigh the potential harm I have identified to character and appearance of the surrounding area, biodiversity, and lack of accessibility to services and facilities by sustainable transport modes.
26. Whilst I have arrived at my decision independently, my view is reinforced by the approach taken by Inspectors on a number of appeals highlighted by the Council⁴. Although in different areas of the country, in those appeals the accommodation was similarly considered to be self-sufficient with no clear functional link to the main house, and therefore unsuitable for their use to be controlled by condition.

Conclusion

27. For the above reasons, and having taken all other relevant matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR

⁴ Appeal References APP/Q3115/W/20/3250971; APP/K0425/W/20/3244458; APP/G2713/W/19/3228481; and APP/B1930/W/18/3217177