
Appeal Decision

Site visit made on 10 May 2022

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2022

Appeal Ref: APP/U2235/D/22/3291355

Island View, The Street, Wormshill, Sittingbourne ME9 0UB

- 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 Geoffrey Stilwell against the decision of Maidstone Borough Council.
 - The application Ref 21/504186/FULL, dated 26 July 2021, was refused by notice dated 3 November 2021.
 - The development proposed is described as 'garage & room over (residential use) and repositioned driveway and site entrance'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a four bay garage with office above and repositioning of access and driveway at Island View, The Street, Sittingbourne, ME9 0UB in accordance with the terms of the application, Ref 21/504186/FULL, dated 26 July 2021, and the plans submitted with it, subject to the conditions set out in the schedule below.

Preliminary Matters

2. During the appeal the appellant submitted a certified copy of an executed planning obligation in the form of a unilateral undertaking (the UU). It relates to the use of the proposed building. The Council was given an opportunity to comment on the UU. I have taken comments received into account in my decision, including from the appellant in response to the Council's comments. I deal with the UU in the second main issue below.
3. The description in the banner above is taken from the application form. My decision above uses the wording in the Council's decision notice which is more precise and certain. It is also consistent with the description used by the appellant in the appeal form and in the UU.
4. The Council did not object to the proposed repositioned access and driveway, which includes masonry flank walls and gates similar to existing. Nor do I.

Main Issues

5. The main issues are:
 - the effect of the proposed building on the character and appearance of the area, including the Kent Downs Area of Outstanding Natural Beauty (the AONB); and
 - whether it could be used for a purpose incidental to the domestic use and occupation of the appeal property.

Reasons

Character and appearance

6. The appeal property is a large, detached chalet bungalow with a double garage in a large garden plot on one side of a road (The Street). At the date of my visit work was in progress to extend the bungalow. This enclave of development is enclosed by a tall, thick hedgerow which includes some trees, with some timber fencing inside. It is surrounded by large, open arable fields with few intervening boundary hedgerows or trees. There is a similar scattered, isolated pattern of individual or small clusters of buildings (residential and/or rural) in the vicinity. It is an expansive, mainly flat, remote rural landscape with extensive panoramic views across the countryside. The appeal property and site is locally distinctive for these reasons, including as part of the AONB.
7. The National Planning Policy Framework (the Framework) requires that I give great weight to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty. It also states that the scale and extent of development within these designated areas should be limited (paragraph 176).
8. The proposed building would occupy part of an existing concrete base previously used for a large steel frame building, now dismantled. It would be about the same length and broadly in keeping with the design vernacular of the appeal property, including external materials. However, it would be significantly narrower, appreciably lower in height and smaller in footprint and floor area. Despite a number of dormer windows, these would be relatively small and although over two floors, the first floor would be within the roof such that the building would be overtly single story in form. It would not be sited far from the appeal property, facing a gravel parking courtyard, within the garden.
9. It would, therefore, relate sympathetically to the bungalow and not overwhelm or dominate it, including because it would have substantially less scale and massing and not be overly bulky. It would as a result appear as a subservient outbuilding in relation to the bungalow and the plot and be set well-back from the road. Consequently, this limited form of development would not be fundamentally incompatible in this rural area or in the AONB.
10. The building would be sited in a corner next to two boundaries. While the hedgerow would screen the vertical elevations (as would, partially, the fence) and most of the pitched roof, the upper part of the roof and ridge would be visible in the shorter and medium distance views that I have been referred to¹. However, these parts would have a limited visual presence in these views and no discernible impact in the longer distance views, including when vegetation was not in leaf. Nor would it be out of keeping with similar glimpsed or distant views of other buildings in the surrounding area. I therefore have no reason to disagree with the appellant that landscape and visual impact in year 1 would range between a negligible and moderate adverse effect, reducing to a moderate, minor or negligible neutral effect in year 15.
11. As a result, the building would not be unduly conspicuous or prominent or, therefore, incongruous or visually intrusive. Nor would it have any appreciable or meaningful spatial adverse effect in the countryside or in public views. Accordingly, the location and design of the development would have a neutral

¹ Landscape & Visual Impact Appraisal, January 2022 – prepared by Brindle & Green landscape consultants

effect on land within the AONB and would not detract from its landscape and scenic beauty or its wildlife or cultural heritage.

12. Taking all of the above into account, I find that the development would not cause harm to the character and appearance of the area, including the AONB. Consequently, it would comply with Policies SP17, DM1, DM3, DM30 and DM32 of the Maidstone Borough Local Plan 2017 (the LP). These policies include that development in the countryside should be high quality and maintain local distinctiveness, including its landscape value, mitigate impacts and conserve and enhance the AONB. In particular, outbuildings should be well designed and sympathetically related to an existing dwelling without overwhelming or destroying its original form, be subservient in scale, location and design and cumulatively be visually acceptable in the countryside.
13. It would also be consistent with other objectives of the Framework to recognise the intrinsic character and beauty of the countryside (paragraph 174 b)).

Use of the building

14. While there is no statutory definition of a dwellinghouse, it is well established in case law that it should have the facilities required for day-to-day private domestic existence. It is also necessary that it should be so used. The size of the proposed building would be comparable to a small dwellinghouse and there are no details of the internal arrangement or fit out of the first floor.
15. However, the application is not for a dwellinghouse. The four bay garage at ground floor level would store the appellant's collection of racing cars and trophies. These are currently kept abroad. The space above would be an office for homeworking, including storage. The building would be located within a single domestic plot near the appeal property and be functionally associated with its use and occupation.
16. Notwithstanding the appellant's UU and the Council's concerns with some aspects of it, the Framework states that a planning obligation should only be used where it is not possible to address unacceptable impacts through a planning condition (paragraph 55).
17. The Council has suggested a condition so that the building would be used for purposes incidental to the domestic use of the appeal property, so preclude its use as a separate dwellinghouse. While this is, in essence, what the UU seeks to achieve, the appellant agrees to the imposition of such a condition as an alternative. Moreover, if the building is not built or used as proposed, or there is a material change of use in the future to create a separate dwelling, then planning permission would be required with a risk of enforcement action if such permission was not granted.
18. In these circumstances, I am, therefore, satisfied that the UU is not necessary to make the development acceptable in planning terms because a condition could achieve the same aim. The obligations in the UU are otherwise conditional, inter alia, on it meeting all three of the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, which it would not in this case.
19. Considering the above, I find that subject to a suitable planning condition the proposed building could be used for a purpose incidental to the domestic use and occupation of the appeal property. Accordingly, it would comply with

LP Policy DM32(2)(iii) which seeks to ensure that development in the countryside does not result in a separate dwelling.

20. The proposal would also be consistent with objectives of the Framework to avoid unsustainable, isolated new homes in the countryside without the requisite need or justification (paragraphs 78, 79 and 80).

Conditions

21. The Council has also suggested some other conditions. Where required, I have modified the wording of the conditions in the interests of clarity and have had regard to the tests in Framework paragraph 56 and in Planning Practice Guidance². I have also considered the need for any other conditions. The main parties were given an opportunity to comment on these conditions and I have taken comments received into account.
22. In addition to the standard time limit condition (1), a condition to specify the approved plans is necessary to ensure certainty (2). I have omitted reference to the submitted as existing 'plan and elevations' plan³ because the steel framed building shown in it is no longer erected on the site. A condition is necessary to ensure that external materials of the building are satisfactory in appearance, in accordance with the details set out in the application form (3).
23. Though not suggested by the Council, conditions are also necessary to retain and enhance the existing boundary hedgerow to screen part of the building (4), to avoid external lighting impacting adversely on dark skies⁴ (5) and to ensure that the existing site entrance is stopped up and the driveway removed so as to provide safe and suitable access to the appeal property and site (6). A condition is also necessary to ensure that enhancements are carried out to provide net gains for biodiversity at the site (7). Condition (8), to control the use of the building, is necessary for the reasons explained in the second main issue. Conditions (3) to (8) are also in the interests of the character and appearance of the area, including the AONB.

Conclusion

24. The proposal would accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding.
25. Consequently, for the reasons given above I conclude that, subject to conditions, the proposal is acceptable and the appeal should therefore succeed.

Robin Buchanan

INSPECTOR

² Paragraph 21a-003-20190723

³ Drawing number 2248-04 Rev B

⁴ Having regard to 'The Reduction of Obtrusive Light' Guidance Note 01/21 – Institution of Lighting Professionals

Schedule of Conditions (8)

- 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:
 - 2248/50 Rev C Site location plan, existing and proposed site/block plans
 - 2248-51 Rev A Proposed roof plan, floor plans and elevations
 - 2248/52 Existing and proposed road elevations (wall and gates)
- 3) The external surfaces, windows and doors of the development hereby permitted shall be constructed in the materials shown in section 10 of the planning application form.
- 4) No retained hedgerow shall be cut down, uprooted or destroyed and shall be maintained at a height above adjoining ground level of at least 4m. If any retained hedgerow is cut down, uprooted, destroyed or dies another hedgerow of the same species shall be planted at the same place in the first planting season thereafter and retained in accordance with this condition. In this condition 'retained hedgerow' means an existing hedgerow which is to be retained in accordance with the details shown in the approved proposed site plan (drawing number 2248/50 Rev C).
- 5) No external lighting shall be installed on the building hereby permitted, nor shall it be illuminated by any proposed external lighting, until there shall have been submitted to and approved in writing by the local planning authority details of such lighting. External lighting shall be installed and maintained thereafter in accordance with the approved details.
- 6) The building hereby permitted shall not be brought into use until the existing site entrance, including walls and gates, as shown in the approved existing site plan (drawing number 2248/50 Rev C), has been removed and stopped-up. The existing site entrance shall be planted with a new hedgerow of the same species as the retained hedgerow, and the existing driveway shall be planted with grass, as shown in the approved proposed site plan (drawing number 2248/50 Rev C) in the first planting season thereafter. The new hedgerow shall be maintained as a 'retained hedgerow' in accordance with condition 4 and shall have the same meaning.
- 7) The building hereby permitted shall not be brought into use until a log pile and bird boxes have been installed in accordance with the details shown in the approved proposed site plan (drawing number 2248/50 Rev C). These measures shall be retained thereafter in accordance with the approved proposed site plan.
- 8) The building hereby permitted shall not be used other than as, or for purposes, incidental to the domestic use of the dwelling at the appeal site, currently known as 'Island View', and for no other purposes or use, including as a separate dwellinghouse.