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## Appeal Decision

Site visit made on 17 August 2022

**by G Roberts BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6th September 2022**

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### **Appeal Ref: APP/D0840/D/22/3296848**

### **Moorgate, Higher Road, Pensilva, PL14 5NJ**

- 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 Carnegie-Rance against the decision of Cornwall Council.
  - The application Ref. PA21/08003, dated 22 September 2021, was refused by notice dated 15 November 2021.
  - The development proposed is erection of timber single storey granny annexe for ancillary use to the main dwelling.
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### **Decision**

1. The appeal is allowed and planning permission is granted for erection of timber single storey granny annex for ancillary use to the main dwelling at Moorgate, Higher Road, Pensilva, PL14 5NJ in accordance with the terms of the application, Ref. PA21/08003, dated 22 September 2021, and subject to the conditions listed below.
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Moorgate.
  - 3) The building hereby permitted shall be carried out in accordance with the following approved plans: 1942.7.21.4 (Location/Block plan); 1942.7.21.5 (Proposed Block plan); 1942.7.21.2 (Proposed Elevations); 1942.7.21.1 (Proposed Footprint); 1942.7.21.3 (Proposed Elevations).

### **Main Issue**

2. The main issue is whether the whether the proposed development would be suitably located and appropriate having regard to its siting, scale and use.

### **Reasons**

3. The appeal site is located on the southern side of Higher Road and comprises a large detached two storey property with gardens to the front and rear, as well as a side garden that includes a driveway, a parking area with single storey garage, leading to a further area of parking to the west of the host property. The rear garden, to the south, slopes downwards and is well screened with sitting out areas, a vegetable patch and a single storey garden outbuilding with

- adjoining pond. Beyond this is a further single storey timber building, which has the appearance of a stable, and to the south and east of this a paddock.
4. As I observed on my visit, part of the southern and eastern boundary to the appeal site, shown on the submitted plans and evident from the aerial photograph in the Appellants Statement, has been removed, albeit the stone markers or gate posts that formed this boundary are still in place. At the time of my visit, a mobile caravan was also sited adjoining the garden outbuilding.
  5. The appeal proposal involves replacing the existing outbuilding with a new single storey flat roofed building that would be used as a residential annex to the host property. The submitted evidence indicates that the annex would be occupied by the owners (Appellants), who, due to their advancing age and ill health, require more suitable accommodation and the support of their family, who will reside in the host property. The proposed footprint shows a simple layout with a combined living and kitchen area, shower room, toilet and two bedrooms. No other external works are proposed.
  6. The Council contend that the proposal would be tantamount to a new dwelling and would not genuinely be ancillary. Its Delegated Report (DR) refers to guidance that the Council has produced on annexes, which they say was updated in May 2020. However, there is no reference to this guidance in their reason for refusal and I have not been provided with a copy of this document. The DR continues by stating that the guidance does not have the weight of adopted policy and is intended to provide consistency in considerations. The DR then provides a list of criteria referenced 'a' to 'f' (inclusive), which the report indicates are the normal requirements for annexes.
  7. In the absence of a copy of this document I am unable to comment on its status. Even so, I have adopted the list of criteria in the DR, on the understanding that these emanate from the guidance, as a basis against which to assess the appeal proposal, and had regard, therefore, to the guidance as a material consideration. In relation to the Council's contention that the proposal is effectively a separate dwelling, the development that is before me and the subject of this appeal is for a proposed annex. There is no proposal before me for a separate dwelling and I have, therefore, determined the appeal on this basis.
  8. Based on criteria listed in the DR and my observations on site, in my view, the proposed building would constitute a residential annex in that: it would replace an existing outbuilding that appears to have been used for domestic purposes to serve the host property; it would be in the same ownership as the host property; it is shown to share the services and utilities of the host property; it would share the existing pedestrian and vehicular access, and parking to the host property; the proposed annex would be well related to the host property and would have a strong visual link with it; the evidence indicates that the intended occupants of the annex would require the support and care of their family who would live in the host property providing a strong functional link; it would secure the replacement of an existing poor quality outbuilding making effective use of the land; there would be no new boundaries or subdivision of the plot; the replacement building would be small-scale, and would secure a high quality sustainable design; and, the proposed building would be subservient to the host property.

9. Overall, therefore, the appeal proposal satisfies, in my view, the criteria listed in the DR and would thus be compliant with the Council's guidance on annexes.
10. The Council contend that the proposed annex would be sited 25 metres from the host property, which they argue is too far to provide a physical and functional link. The Appellant suggests that the distance would be 19 metres. Whether the distance is 19 or 25 metres, in neither case is that, in my view, a significant distance where large plots, such as the appeal site, are concerned. It is common for annexes to be formed through the replacement or conversion of existing outbuildings, and for those buildings to be separated by some distance from the host property. The proposal would still, in my view, have a visual, functional and physical link with the host property. Furthermore, I note that the Appellant sought to locate the proposed annex closer to the host property but given the topography of the site and ability to replace the existing outbuilding, considered the proposed location to represent the most efficient use of the site.
11. The Council argue that the proposal would result in a large self-contained unit with its own garden. I do not agree. The proposed annex is single storey and small-scale, and would clearly be subservient to the host property. The proposed layout does not show a separate garden and whilst there are boundary features to the north of the new building, these comprise a low level stone/earth bank and the remnants of a gate. It is not uncommon, in my view, to find gardens comprising separate parcels with different functions, for example, a vegetable patch, play area or for garden waste/recycling, and with their own boundary enclosures. In this particular case, the rear garden areas that make up the appeal site logically link together, they appear to have been used for residential purposes in conjunction with the host, there are no physical boundaries preventing movement between them and they are only accessible from the host property.
12. Based on the above and whilst I have noted the Council's arguments about curtilage, the proposed building would not, in my view, be located in a part of the appeal site that is physically separate from the residential use of the host property. It would be in the same ownership and as the evidence before me indicates, functionally it would be well related to, reliant on and would share a number of the host's services and facilities, as well as its vehicular and pedestrian access. I am satisfied, therefore, that, as a matter of fact and degree, the proposed annex would be within the curtilage of the host property.
13. In relation to the land to the south and east of the appeal site, also owned by the Appellant, the lawful use of that land is not a matter that is before me or an issue that I need to consider in the context of a section 78 appeal that only seeks planning permission for a new annex. Whilst I also acknowledge that the proposed annex would contain the facilities required for a separate dwelling, they are the type of facilities you would expect to see in a residential annex. None of these factors affect, therefore, the findings I have set out above.
14. I find, therefore, that the siting, scale and use of the proposed annex would be acceptable, that it would not involve the creation of a separate dwelling and that there would, therefore, be no conflict with Policies 1, 2, 3, 7 and 12 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (November 2016) or any of the corresponding policies of the National Planning Policy Framework (July 2021) (Framework).

## **Other Matters**

15. The DR indicates that the appeal site lies adjacent to the Minions Conservation Area (MCA) and within the Caradon Mining District World Heritage Site (WHS). Whilst the Council have not raised this as an issue, paragraph 190 of the Framework requires consideration to be given to the impact of any new development on the setting of the MCA, with section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 also requiring special attention be paid to the desirability of preserving or enhancing the character or appearance of the WHS.
16. As the MCA is located to the west and separated from the appeal site by a strong physical boundary, comprising a stone wall with mature hedging/trees and as the proposal would be of a high quality design replacing an existing tired timber outbuilding, I am satisfied that the proposal would not have any impact on the setting of the MCA. I am also satisfied, for similar reasons, that the proposal would secure the high quality of design expected within the WHS and would not have any material impact on the authenticity and integrity of that heritage asset.

## **Conditions**

17. I have considered the suggested conditions against the advice in the Framework and the Planning Practice Guidance on the use of planning conditions. A condition which refers to the approved plans is necessary and reasonable to ensure a high quality development and to reflect the details included in the application. I have, however, added a list of plans for clarity. A condition which seeks to restrict the use of the proposed building to a residential annex is also reasonable, necessary and enforceable, to prevent the proposed building being used or occupied as a separate and independent dwelling. I have, however, amended the suggested wording so that it is more concise.

## **Conclusions**

18. For the reasons given above and having taken all the matters raised into account, I conclude that the appeal should be allowed.

*G Roberts*

INSPECTOR