

Appeal Decision

Site visit made on 5 October 2022

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Appeal Ref. APP/G1630/D/22/3303221

Carrant House, Aston on Carrant, Tewkesbury GL20 8HL

- 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 Marcello Briano against the decision of Tewkesbury Borough Council.
 - The application ref. 22/00118/FUL, dated 29 January 2022, was refused by notice dated 25 April 2022.
 - The development proposed is described on the application form as "*Demolition of flat roofed double garage and construction of two storey unit to provide garage & garden store with ancillary annex accomodation (sic) over.*"
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The word "outbuilding" appears on the Council's decision notice and the appeal form in the description of the proposal in place of the word "unit". I also favour that word as it makes for a more accurate description of what is proposed.
 3. When the Council made its decision to refuse planning permission, the Tewkesbury Borough Plan 2011-2031 (TBP) was at a very advanced stage in its route to adoption. I am aware that before the appeal was lodged, it was formally adopted on 8 June 2022, replacing the saved policies of the Tewkesbury Borough Local Plan to 2011 (TBLP). Policy HOU8 of the TBLP is replaced by Policy RES10 of the TBP. Both those policies relate to the alteration and extension of existing dwellings and there is no material difference between them when the policies and reasoned justifications are read together in the round, insofar as the key issues raised by this appeal are concerned.
 4. As suggested by the Council in its questionnaire, in addition to visiting the appeal property I also assessed the appeal proposal from within the adjacent property to the east known as Saunders Orchard.
 5. The site is located in Flood Zones 2 and 3. Whilst this ordinarily might point to the need for an applicant to provide a site-specific flood risk assessment in accordance with footnote 55 of the National Planning Policy Framework (the Framework), the Council raised no concerns, stating that the impact of the
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proposal upon flooding had been carefully assessed through information provided on floor levels and known or modelled flood levels. I make no further comment on this matter.

Main issues

6. The main issues are therefore, firstly, the intended occupation of the outbuilding as a residential annex allied to its effect on the character and appearance of the host dwelling and the surroundings and secondly, the proposal's impact on the living conditions of the occupiers of Saunders Orchard with particular regard to the potential for any loss of light.

Reasons

7. Aston on Carrant is a quiet rural settlement. It contains a diverse range of residential properties in terms of age, design, form and siting. Many are set in large gardens and benefit from ancillary buildings. Carrant House is a sizeable 4-bedroom house located within a large plot. As confirmed in his statutory declaration, the appellant wishes to remove a double garage and replace it with a 2-storey outbuilding to provide a residential annex for his "*elderly and infirm parents*" above a replacement garage and garden store. The intended occupation of the outbuilding's upper floor is therefore as a residential annex.
8. The Council seems to have approached the case on the basis that the proposal would effectively amount to a separate dwelling from the main house, without seeking further clarification from the appellant about his intentions, unlike the approach taken at Brook House nearby under application ref. 18/00484/LBC. In any event, it is important that I consider the proposal as applied for. There is no separate dwelling before me. The application was registered, validated and advertised as a proposal that includes a residential annex in accordance with the description of the proposal on the application form. The red edge of the application site surrounds the whole site of Carrant House.
9. Whilst the outbuilding would have 2 floors and be a substantial structure in its own right, it would not challenge the dominance of the main dwelling in terms of its overall size, scale, bulk and massing and would not appear inappropriate when taking in its surroundings. Indeed, the detailed design contains some high-quality features that reasonable observers might associate with a well-designed ancillary outbuilding including a steeply pitched roof of natural slates, horizontal weatherboarding, a jettied upper floor bay, rooms set very much within the roof space and simple vertically planked stained timber doors.
10. Even though the annex would provide the facilities required for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling. As a matter of fact and degree, the accommodation would plainly be capable of being occupied as an annex, taking into account the following: the intended occupiers would be close family members who are likely to share various living activities with the family in the main dwelling; the whole site of Carrant House would remain owned by the appellant with no suggestion of there being separate titles, bills or postal addresses or any letting to tenants; the residential accommodation would be closely related to the main house with the principal windows to the upper floor habitable rooms directly overlooking, from a short distance away, the garden area directly behind the main dwelling; the access, parking and garden areas are clearly capable of

being shared; and the floor space of the annex and the outbuilding as a whole would be far smaller than the floor space of the main dwelling.

11. Whilst there are some inevitable similarities with the appeal decision presented at Appendix 2 of the appellant's appeal statement in terms of the intended occupation as an annex, that case related to the conversion of a single storey detached garage in a front garden in a wholly different urban context. I have assessed the appeal before me on its own merits.
12. I am aware that the development is likely to remain in place long after the need which gave rise to the application has gone. As noted in the Council's Questionnaire, it would be possible through the imposition of a planning condition to restrict the future use of the outbuilding such that it shall not be occupied or used at any time other than for purposes ancillary to the residential use of the dwelling known as Carrant House. This will reflect the purposes stated by the appellant and adhere to the specific requirement for such a condition as set out in Policy RES10 of the TBP, whilst the outbuilding's use for other purposes might raise wholly different considerations which could well be unacceptable in planning terms.
13. With such a condition imposed, I find on the **first main issue** that the intended occupation of the outbuilding as a residential annex allied to its effect on the character and appearance of the host dwelling and the surroundings would not give rise to any material harm. The relevant design requirements in Policy SD4 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS), Policy RES10 of the TBP and the Framework, insofar as they relate to character and appearance, would be respected.
14. Concerns about a potential loss of light were lodged by the neighbouring occupiers at Saunders Orchard, the 2-storey dwelling immediately to the east of the site of the proposed outbuilding. The Council's delegated report and decision notice were in agreement with those objections.
15. The proposed outbuilding would be slightly further away from the 2 m high fence on the common boundary with Saunders Orchard than the existing garage. However, that garage is essentially a flat-roofed structure no more than about 2.4 m high. The proposed outbuilding would be a significantly larger and taller building and would be in close proximity to 4 windows in the west-facing side elevation of Saunders Orchard. The 2 main ground floor side windows serve one large room containing a combined kitchen and dining area with a TV. There are also patio doors in the rear of that room. Given the size of the kitchen and the open plan layout with the dining area, it is not reasonable to say that the only habitable room is the dining area. The whole room could well function as the "*main living/amenity space*" within the neighbours' home, as they have claimed in their representations.
16. The neighbours in April 2022 referred to the Building Research Establishment document titled *Site layout planning for daylight and sunlight – a guide to good practice* (BRE guide). Although the BRE guide was revised in June 2022, the relevant test the neighbours referred to has been carried forward. A 25-degree line can be used to assess windows opposite a new development. Light would be blocked if a 25-degree line drawn from the centre of the lowest window in an adjacent property were to be obstructed. There seems to be no dispute that

the proposed outbuilding would breach the 25-degree line in respect of both the main opposing ground floor windows. This is an important material consideration especially as the infringement would not be marginal. The proposal would overshadow those windows and significantly reduce the amount of light reaching the combined kitchen and dining area of Saunders Orchard.

17. The neighbours would no doubt find that this adverse effect would be compounded by the amount of sky that would be lost in views out of the 2 windows and by the degree to which the late afternoon and evening sun reaching those windows would be reduced. I realise that light enters through the rear patio doors but the affected room has considerable depth and as the doors are north-facing they do not receive sunlight. Without a professionally prepared daylight and sunlight report looking into the detailed tests in the BRE guide and refuting these concerns, I consider that the neighbours and the Council made the correct assessment on this issue. The affected habitable room would become a far less enjoyable space to spend time in as a result of the proposed development. The neighbours suggested an alternative siting for the outbuilding but that is something that should be addressed with the Council in the first instance if the appellant wished to do so. It is not for me to comment on in the context of the specific proposal before me.
18. I find on the **second main issue** that the proposed outbuilding would have an unacceptable impact on the living conditions of the occupiers of Saunders Orchard with particular regard to loss of light. As such, this new development would not achieve the aims for good neighbourliness as sought by Policy SD14 of the JCS and Policy RES10 of the TBP. Similarly, it would conflict with the Framework which seeks to ensure developments create places with a high standard of amenity for existing and future occupiers.

Conclusion

19. My finding on the second main issue is decisive to the outcome of this appeal. There is conflict with an up-to-date development plan and the Framework is clear that in those situations permission should not usually be granted. The harm cannot be mitigated by the imposition of planning conditions and it is not outweighed by my finding on the first main issue or by other material considerations, including the habitable space that the scheme would provide and the pressing personal circumstances in relation to the appellant's parents. For the reasons given above and having regard to all other matters raised and the lack of objections from Ashchurch Rural Parish Council, I have concluded that this appeal should not succeed.

Andrew Dale

INSPECTOR