



Appeal Decision

Site visit made on 28 February 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/P0240/W/22/3308528

The Swallows, Flitton Hill, Flitton MK45 2BE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr G Gendy against the decision of Central Bedfordshire Council.
 - The application Ref CB/22/03168/VOC, dated 3 August 2022, was refused by notice dated 26 September 2022.
 - The application sought planning permission for the erection of a three-bay detached garage building on land to the rear of The Swallows, without complying with conditions 2 and 3 attached to planning permission Ref CB/21/03754/VOC, dated 22 October 2021.
 - The conditions in dispute are Nos 2 and 3 which state that:
No 2 - The building shall only be used as a domestic garage and for purposes incidental to the enjoyment of the dwelling known as The Swallows; and
No 3 - The gate as shown on plan number 16-029-1000 Rev G shall be installed within 3 months of the date of this decision and hereafter retained.
 - The reasons given for the conditions are:
No 2 - To prevent the introduction of an inappropriate use harmful to the residential character of the area; and
No 3 - To ensure suitable and convenient access is available to the incidental garage building from the host dwelling.
-

Decision

1. The appeal is allowed, and Planning Permission is granted for the erection of a three-bay detached garage, at The Swallows, Flitton Hill, Flitton MK45 2BE, in accordance with the terms of the application Ref CB/22/03168/VOC, dated 3 August 2022, without compliance with condition 2 previously impose on planning permission Ref CB/21/03754/VOC, dated 22 October 2021, and subject to the following conditions:
 - 1) All external works hereby permitted shall be carried out in materials to match as closely as possible in colour, type and texture, those of the existing building.
 - 2) The gate shown on plan number 16-029-1000 Rev G shall be installed within 3 months of the date of this decision and thereafter retained.
 - 3) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 16-029-1000 Rev G and 16-029-100 Rev A.

Procedural Matters and Background

2. I have made minor amendments relating to the appeal property address and the description of development in the formal decision. These amendments avoid duplication and ensure consistency with previous planning permissions.
3. I have also had regard to, in accordance with paragraph 130 of the National Planning Policy Framework (the Framework), the Flitton, Greenfield and Pulloxhill Neighbourhood Plan 2019-2035, which the Council provided as part of its appeal submission.
4. Planning permission was granted for a three bay garage at the appeal property.¹ Conditions attached to this original permission were varied by a second planning permission granted for the three bay garage, which included installation of windows and a mezzanine floor.² The appellant is seeking to vary or remove conditions 2 and 3 of this second planning permission. Condition 2 requires the building to only be used incidental to the dwelling. Condition 3 requires a pedestrian gate to be installed in an internal boundary in the appeal site for pedestrian access between the garage and the dwelling.
5. The approved plans of the second planning permission shows two sets of double doors on the front elevation of the garage. However, when I conducted the site visit the garage had three sets of double doors on this elevation. Be this as it may, this appeal has focused on the conditions that have been disputed by the appellant. The inconsistency in drawings and what is built is a matter for the main parties to resolve outside of this appeal.

Main Issues

6. The main issues in this case are whether the conditions in dispute are reasonable and necessary, having regard to the character and appearance of the area; and the safety and suitability of the pedestrian access.

Reasons

Character and Appearance

7. The appeal property comprises a detached dwelling in a large plot. The garage, subject of this appeal is in the curtilage of The Swallows and located to the rear of that dwelling. Although there is a neighbouring dwelling the appeal property has a distinctly rural setting within the countryside.
8. The structure in question in this appeal has been granted planning permission as a garage, albeit with a mezzanine floor and washroom facilities. The evidence presented in this appeal indicates the sole primary use at the appeal property is a dwellinghouse. The garage use differs in character from the dwelling, but in this residential planning unit, this garage is for the function of the enjoyment of the dwelling; the garage is therefore incidental to this primary use. As approved the garage has a normal functional relationship with the primary dwelling, The Swallows. This incidental use is reflected in the description of development on the planning permissions and in the approved plans.

¹ Ref: CB/18/04563/FULL

² Ref: CB/21/03754/VOC

9. If the garage was used for the provision of additional living space, it would not be an incidental use to the primary use of the appeal property. As, such, planning permission would be required for this material change of use to a residential use. Moreover, if the garage is not built according to the approved plans or is used in a manner that does not have a normal or common functional relationship with the dwelling, this would risk enforcement action unless appropriate permissions were granted. Indeed, The Council has indicated in its appeal statement that this would be the case.
10. The planning history related to the appeal property and neighbouring Hollington House, illustrates that the above course of action has been carried out on a number of occasions, with the refusal of proposals including a Lawful Development Certificate. The evidence before me does not demonstrate that a condition would provide any additional certainty of such an outcome. The concerns of the Council, based on the number of previous applications, would therefore not be addressed by the retention of condition 2. This matter has not altered my finding in this case for this reason.
11. Also, the requirement for planning permission ensures that matters such as the effect of a material change of use on the character of the area could be considered if such changes were proposed at the appeal property. This would also be the case in respect of the consideration as to whether this location would be suitable for a residential use.
12. Given the circumstances outlined above, removing condition 2 from the planning permission would not alter the description of the approved development and the operative part of the planning permission. Nor would removing this condition separate the garage from the dwelling and that planning unit for this reason. Moreover, the Planning Practice Guidance (PPG) states conditions restricting future change of use may not pass the test of reasonableness or necessity.³ Therefore, I find it unnecessary to attach a condition which reiterates the intent of the permission that has been granted in this case. Condition 2 does not satisfy the test for planning conditions, as set out in Paragraph 56 of the National Planning Policy Framework (the Framework), or the advice in the PPG in respect of this matter.
13. The Council contend that condition 2 is imposed on the original planning permission and is necessary to ensure occupants of The Swallows would have access to the garage. However, this functional linkage is assured by the description of the development.
14. The Council also states that condition 2 was necessary because of the relationship of appeal property with the neighbouring property. However, the Council has set out that the context has now changed and there is a permanent boundary between The Swallows and Hollington House. Moreover, this change has not altered the primary use of the appeal property or the incidental relationship of the garage to this use. In any event, as outlined above, I find condition 2 does not provide greater certainty of the relationship between the garage and The Swallows. This matter has not altered my findings in this case for this reason.
15. For the reasons outlined above, I find that the removal of condition 2 is justified as the condition is not reasonable and necessary, having regard to the

³ Ref: Paragraph 017 Reference ID: 21a-017-20190723

character and appearance of the area. Removing the condition would not have a harmful effect on the siting of this development at this location and on the character of the area. In this regard, this aspect of the proposal would not conflict with Policy HQ1 of the Central Bedfordshire Local Plan (Local Plan). This requires high quality development that, amongst other matters, reinforce the local distinctiveness of the area.

16. The removal of condition 2 would also not be inconsistent with guidance contained within the Central Bedfordshire Design Guide and the Framework which seeks well designed places.

Access

17. The sole vehicular access to the garage is via a side rural track. This track is divided from the dwelling and garage by a boundary fence. I observed, on my site visit, double gates that provide access onto the track from the garage. The approved plans also show an internal boundary between the dwelling and the garage in the curtilage of the appeal property and a pedestrian gate at the northern tip of this internal boundary. This would allow a pedestrian route between the garage and the dwelling at the appeal property. This pedestrian gate is the subject of the disputed condition 3 and had not been installed at the time of the site visit.
18. The pedestrian gate would be a small feature. However, it would provide a direct and convenient pedestrian interlinkage between the dwelling and the incidental building. Also, using this direct link through the garden of the property avoids pedestrians using the rural track which is used by vehicles accessing the appeal property, a farm and a commercial unit. The pedestrian gate is therefore significant in this regard.
19. The appellant contends that this access is unnecessary as the access via the track is suitable both for pedestrians and vehicles. They also highlight that such an arrangement is not unusual in other developments. Be this as it may, while the distance via the track is relatively short, it is significantly less direct for occupants of the dwelling when walking to the garage via the approved gate. In turn, the approved direct pedestrian link is considerably more convenient and suitable, than walking along the track and crossing the verge to access the front of the dwelling, particularly for individuals with reduced mobility or families with small children.
20. Also, in the absence of pavements on the track, pedestrians share the track with vehicles accessing the commercial unit and the farm. Although vehicle flows are low, sharing this track with domestic and commercial vehicles, would be materially less safe for pedestrians than if they were to have access through the approved gate across the garden. The pedestrian gate may not be essential to ensure that the garage remains incidental to the dwelling. However, the approved gate would be important in so much as it would avoid possible conflict between pedestrians and motorists.
21. Condition 3 requires that the pedestrian gate should be installed within three months, and this is necessary as it provides certainty that this important feature will be installed within a reasonable period of time. Consequently, I find that the condition is justifiable and reasonable in all respects.

22. The appellant states that the original permission for the garage did not include the gate. Nevertheless, it was included in the approved plans attached to the second planning permission. The Council stated reasons as to why the condition was necessary and I agree with these reasons. I have found that condition 3 ensures that the development is acceptable in respect to pedestrian safety and convenience, it is necessary and reasonable in this regard.
23. In light of the above, I conclude that condition 3 is reasonable and necessary and does satisfy the test for planning conditions as set out in the Framework and PPG. Accordingly, I find that removing condition 3 would have a harmful effect on the pedestrian access between the garage and the dwelling, having regard for safety and suitability. In this respect, removing condition 3 would conflict with Policies T2 and T3 of the Local Plan, which amongst other matters, require development to have safe and suitable access.

Other Matters

24. Concerns have been raised in respect of highway safety if a change of use of the garage to a dwelling was permitted. However, as already outlined this would require further consent, and similar to issues of character and appearance, this would provide an opportunity to consider highway matters. This has not altered my findings for this reason.
25. My attention has been drawn to civil action relating to the farm track and comments have been raised about the letting of The Swallows. However, these matters are outside the scope of this appeal.

Conditions

26. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose those that I consider remain relevant.
27. The Council has suggested conditions in the event that the appeal is allowed. These include requiring written approval for the installation of gates at the access, to avoid obstruction on the carriageway and to allow vehicles to turn in the site. However, the access for the garage is on a rural track and these site access gates are only likely to create an obstruction to other vehicles on limited occasions and for short periods of time. Moreover, there is considerable space surrounding the garage which allows vehicles to safely turn in the site. This condition is unnecessary for this reason.
28. The Council has also suggested amended wording in the event the pedestrian gate, subject of this appeal condition 3, remains. This would require that the pedestrian gate shall not obstruct the highway or turning vehicles. However, the approved layout plan shows the location of the pedestrian gate, and this is a considerable distance from the highway. Also, discreetly positioned at the northeast corner of the plot, the gate would not interfere with vehicles turning in the site. I have not varied the wording of the condition as it is unnecessary for these reasons.
29. The Council wish to specify the activities permitted in the garage and this is to retain onsite parking. However, the appeal plot is sizeable with considerable space for on-site parking at the front and rear. This condition would not be necessary in respect to this matter. Moreover, the condition would also place

unnecessary limits on the activities that the occupants of the dwellinghouse would reasonably expect to do and that is normal in an incidental building.

30. I have imposed the approved plans conditions in the interest of certainty as the development has not yet been carried out in its entirety. The Council has also requested in the event of removing conditions 2 and 3 that drawing no. 16 – 029-1000 Rev F is listed in the approved plans. However, this 'as built' site plan does not include the pedestrian gate. I have found this gate is necessary therefore this drawing is not included in the list of approved plans.

Conclusion

31. For the reasons outlined above and having regard to the development plan and other material considerations, a new planning permission is granted. The disputed condition 2 is deleted, and condition 3 of that previous permission is imposed as condition 2 of this planning permission. Accordingly, the appeal is allowed.

A J Sutton

INSPECTOR