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## Appeal Decision

Site visit made on 14 April 2023

**by N Perrins BSc (hons), MSc, MRTPI**

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

**Decision date: 15 August 2023.**

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**Appeal Ref: APP/Q3305/D/23/3315085**

**Sunindale, Hilliers Lane, Worth, Wells, Somerset, BA5 1LP**

- 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 J Bailey against the decision of Mendip District Council Council.
  - The application Ref: 2022/0439/HSE, dated 1 March 2022, was refused by notice dated 4 November 2022.
  - The development proposed is for a replacement annexe at Sunindale, Hilliers Lane, Worth, Wells, Somerset, BA5 1LP.
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### Decision

1. The appeal is allowed and planning permission is granted for a replacement annexe at Sunindale, Hilliers Lane, Worth, Wells, Somerset, BA5 1LP subject to the following conditions:
  - 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:
    - i. Location Plan 21-19.01
    - ii. Proposed Block Plan 21-19.03A
    - iii. Proposed Ground Floor Plan 21-19.05A
    - iv. Proposed Elevations 21-19.07A
  - 3) The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Sunindale and shall not be occupied as an independent dwelling unit.
  - 4) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified in the application form and shown on the approved plans.
  - 5) The development hereby approved shall at all times be accessed using the access, main entrance and parking area shared with the host dwelling as shown on drawing 21-19.03A and at no time shall any separate, independent access be used or constructed.

## **Preliminary Matters**

2. I note that the planning application was refused by Mendip District Council, which was replaced by Somerset Council on 1<sup>st</sup> April 2023. This change in local authority administrative arrangements does not change any of the development plan considerations relevant to this appeal.
3. I am aware that when the application was originally submitted, the plans showed a larger annexe than is now before me with this appeal. The appellant amended the plans through the course of the planning application seeking to address concerns raised by the Council. The Council refused the application on the basis of the amended plans and for the avoidance of doubt it is these that I have assessed and determined the appeal on.
4. The Council's second reason for refusal relates to the effect of the appeal proposal on phosphate levels within the Somerset Levels and Moors Ramsar site. I note that the requirement for phosphate effects to be mitigated in this regard only applies to the creation of new dwellings. As I have found below that the proposal would not involve the creation of a new dwelling, consistent with the Council's view, there are no phosphate issues arising from the proposal. I have not therefore considered this matter any further.

## **Main Issues**

5. The main issue is whether the proposed annexe would create a separate and independent dwelling in the countryside and thereby harmful to the pattern of development expected by the development plan.

## **Reasons**

6. The appeal site is a large manor-style detached dwelling known as Sunindale set within spacious grounds located in the countryside approximately 2.5km from Wells to the east and 1.5km from the village of Henton to the west. Within the site is an existing annexe building located to the west of the main Sunindale dwelling, an 'in and out' parking area and a large rear garden.
7. The main vehicular access to Sunindale is from Hilliers Lane that leads to the parking area adjacent to the north eastern elevation of the host dwelling. This access point from Hilliers Lane also provides a second access road to grass and paddock land to the south of Sunindale as well a gravel area and small garage / garden store adjacent to the existing annexe building all of which is within the ownership of the appellant but outside the site subject of this appeal. There is a secondary access from Hilliers Lane to the west of the main dwelling that is used mainly for occasional deliveries to the property.
8. The existing annexe has been in situ for many years reportedly being within the planning unit when the appellant bought Sunindale in 1990. The existing annexe is single storey with a floorspace of approximately 45 sqm comprising a large double bedroom, shower room with toilet and sink, living space and full kitchen facilities. The existing annexe is accessed through the main dwelling's rear garden area that leads to a front door on its northern elevation.
9. The appeal proposal would demolish the existing annexe and replace it with a larger building of 81 sqm to accommodate a second bedroom and an increase in living space for occupants. The facilities in the replacement annexe would be similar to the existing situation albeit with the addition of a bath, a store room

- and a reduced kitchen area. The front door to the proposed replacement annexe would be in broadly the same location as the existing building and accessed from the host dwelling's rear garden area.
10. The design of the proposed building would in my view be in keeping with its countryside location in terms of appearance, bulk, scale and height and use of materials. The Council's decision notice does not raise any concerns with the design of the appeal proposal and therefore it is concluded that all parties agree that it is acceptable in design terms.
  11. Notwithstanding the acceptability of the design, the Council contend that the appeal proposal would be tantamount to the creation of a new dwelling due to the increased size of the replacement building and that it could be served by a distinctly separate access to the original dwelling. It is evident that the proposed replacement is larger than the existing building and there is a separate existing access within the appellant's ownership that could provide the replacement annexe with its own independent access. None of these factors can be disputed and I agree that the introduction of an independent and separate dwelling in this countryside location is not appropriate.
  12. However, the appellant's appeal submission has set out that the proposed larger annexe is required to meet the needs of their family, which involves members who live overseas coming to stay for extended periods and interacting with the host dwelling when they are at the site. The appellant states also that some of their family members have mobility issues with one being wheelchair bound. Furthermore, the appellant has set out that their elderly mother comes to stay but may need additional care and access provisions in the future that are not currently catered for in the existing annexe.
  13. Whilst the appellant's information provided in the appeal does not categorically demonstrate that the various family and care needs exist, they have also been consistent throughout as to why the proposal is required and that in practice it would be used in similar way to how the existing annexe is occupied. In this regard, I note there is no dispute that the existing annexe is being used as ancillary accommodation to the host dwelling for use by family members. I consider, therefore, on balance that the reasons for the need for the larger replacement annexe are genuine and have afforded weight accordingly in this decision.
  14. In terms of how the existing annexe functionally relates to the host dwelling, it forms part of the rear garden area and they both share the same external amenity space. It evidently appears as part of the host dwelling's domain and operates as a related feature. Although the appeal proposal is larger, the overall location and entrance would remain the same and will not materially change from the existing situation in how it would functionally relate to the host dwelling and shared use of the garden area. I also agree with the appellant that the proposed replacement annexe would be too close to the host dwelling to be occupied as an independent dwelling without causing issues with loss of privacy for both properties if they were separate planning units.
  15. The appeal proposal will therefore have both a physical and functional relationship with the host dwelling and continue to share day-to-day facilities. Overall, given the location of the proposed building, access to it being broadly similar to the existing annexe and continued shared use of the rear garden

area, I do not consider that the increase in size in itself would result in the creation of an independent dwelling.

16. In terms of the annexe being served by a separate vehicular access, the appellant considers that the second access road to the rear of Sunindale forms part of the domestic curtilage having been established for more than 10 years. Whilst there is correspondence from the Council that appears to agree with the appellant's view on this point, this has not been established through a planning application or lawful development certificate. As this land is outside of the appeal site area and a determination over its lawful status is not before me, I therefore give the matter of domestic curtilage only limited weight in my decision.
17. What is evident, however, is that the second access point adjacent to the annexe exists on the site today and no changes are proposed to this arrangement by virtue of the appeal proposal. The appellant has also clearly stipulated on the plans and their submissions that the existing parking area and main entrance to the host dwelling would be how vehicles and people access the proposed annexe. In this respect, there would not be a material change in access arrangements arising from the appeal proposal when compared with the existing situation. As a further safeguard, the appellant has suggested two conditions to control the access situation on the site, which I discuss later in this decision.
18. In summary, I conclude that, on both the size of the building and how it will be accessed, the replacement annexe would be used for ancillary purposes and will not lead to creation of an independent dwelling or change the status of the site as a single planning unit. In reaching this conclusion, I have also given consideration to long standing case law and information provided by the appellant including *Uttlesford D.C. v SSE & RJ White 1992*, which established that even if accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the host dwelling. I conclude the same in this case and that based on the facts and information provided, the appeal proposal would remain as ancillary to the host dwelling.
19. Moreover, the use and occupancy of the building for solely ancillary residential purposes could be restricted by a suitably worded planning condition. No reasons have been presented that persuade me that such a condition could not be monitored and readily enforced. I am therefore satisfied that safeguards could be put in place to ensure the building was used solely as an ancillary annexe to the host dwelling rather than as an independent dwelling. The inclusion of a condition also provides a betterment to the current situation where there are no restrictions on use in place for the existing annexe.
20. Finally, the first reason for refusal states that the proposal would result in harm from a growth of trips by the private car in an isolated location remote from services. The Council's reasoning in this regard was based on their conclusion that the proposal would create an independent and new dwelling. As I consider that the proposal would be an ancillary annexe to the host dwelling, the use by family members as part of a single planning unit would not in my view result in a materially significant growth in private car trips sufficient to justify refusal of planning permission.

21. In conclusion, I find the proposed annexe would not create a separate and independent dwelling in the countryside and is not thereby harmful to the pattern of development expected by the development plan. Consequently there would be no conflict with Policies CP1, CP2, CP4, DP1, DP7 and DP9 of the Mendip District Local Plan 2006-2029, or Paragraph 80 of the National Planning Policy Framework, which among other things seek to prevent new dwellings in the countryside, promote local distinctiveness and meet access needs of a wide range of users.

### **Conditions**

22. I have considered the use of conditions in line with the guidance set out in the Framework and the Government's Planning Practice Guidance (PPG). I have also considered the conditions suggested by the appellant and the Council.
23. I attach conditions in respect of timescale and detailing the approved plans for certainty as to what has been approved. A condition is also necessary, reasonable and enforceable to ensure the annexe remains ancillary to the main house and prevent it from being used or occupied as a separate and independent dwelling. I have used the wording suggested by the Council for this condition, which I consider is sufficiently precise.
24. The Council has suggested attaching a materials conditions. I agree that a materials condition is required in order to secure a well-designed building that will assimilate with its surrounds. I have amended the wording suggested by the Council to remove reference to the existing building as it would not be clear which building this would relate. Instead, I include wording requiring the materials to accord with the details included on the planning application form and shown on the approved plans, which is sufficiently clear and precise to control the use of materials for the appeal development.
25. The appellant has suggested two conditions seeking to control access to the development. The first proposes to secure the blocking up of the secondary access to the rear of Sunindale, which I do not consider is necessary as it does not appear suitable to provide a separate access to the proposal. I do agree, however, that the second proposed access condition is needed to ensure that the appeal proposal would be accessed only through the existing shared arrangements for the host dwelling. I have amended the wording of the condition proposed by the appellant to ensure it is sufficiently precise and enforceable.
26. Finally, I note that the Parish Council raised concerns about the proposal with respect to the property being referenced in the Somerset Historic Environment Record as a site of an early prehistoric burial that would require an archaeological examination were the development to go ahead. No further information on this matter has been provided as part of this appeal and the Council's archaeology officer did not raise any objections to the proposal during the original application. On this basis and based on the information before me, I do not find the appeal proposal to be in conflict with Policy DP3 of the Mendip District Local Plan, nor do I consider it necessary to attach a condition requiring an archaeological investigation of the site as part of the planning permission granted by this appeal decision.

## **Conclusion**

27. For the reasons set out above, the proposal would not result in the creation of a separate dwelling and the appeal should be allowed subject to conditions.

*N Perrins*

INSPECTOR