



Appeal Decision

Site visit made on 25 October 2023

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th December 2023

Appeal Ref: APP/J1860/W/23/3324757

Holly Cottage, Astley Burf, Worcestershire DY13 0RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Simon Chalk against Malvern Hills District Council.
 - The application Ref M/23/00371/HP, is dated 14 March 2023.
 - The development is a proposed detached annex.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am the Inspector for another appeal on the same site (Appeal Ref: APP/J1860/D/23/3324293). As the proposals differ in respect of the location of the proposed development on the appeal site, it is the subject of a separate decision.
3. A completed planning obligation dated 22 September 2023 and made under Section 106 of the Town and Country Planning Act in the form of a unilateral undertaking (the UU) was submitted as part of the appeal. The UU seeks to restrict the proposed annex from being sold separately from the host dwelling, and accordingly seeks to ensure the annex would remain part of the same planning unit.
4. The access and driveway shown on the proposed site plan is not in the same position as the existing vehicular access to and driveway of the host dwelling. Whilst a new access and driveway are not included in the description of development, I have had regard to the proposed plans in reaching my decision.

Main Issues

5. The Council had not determined the application prior to the submission of the appeal. However, the Council has set out in the appeal proceedings that had it been in a position to issue a decision, it would have refused to grant planning permission. On the basis of the putative reasons set out in the Council's statement of case, I consider that the main issues in this appeal are:
 - whether the proposed detached annex would create an independent dwelling and, if it is an independent dwelling, whether it would be in a sustainable location;

- the effect of the proposed development on the character and appearance of the host dwelling, including its significance as a non-designated heritage asset, and the surrounding area; and,
- the effect of the proposed development on the living conditions of the neighbouring occupiers of The Swallows, in regard to outlook and overshadowing.

Reasons

Independent dwelling and sustainable location

6. The appeal scheme proposes the erection of an annex within the garden of Holly Cottage (the host dwelling), a semi-detached dwelling situated within the village of Astley Burf. The village is not defined by a development boundary and so, for planning purposes, the appeal site lies within the open countryside.
7. The district's development strategy and settlement hierarchy is set out under Policy SWDP 2 of the South Worcester Development Plan (SWDP) and indicates that, in the open countryside, development will be strictly controlled and limited to certain categories of development, none of which apply to the proposal. Policy SWDP 4 of the SWDP relates to the management of travel demand and sets out that proposals must demonstrate the layout of development will minimise demand for travel and offer genuinely sustainable travel choices.
8. The South Worcestershire Design Guide, Supplementary Planning Document (SWDG) sets out in Note 1 that in relation to dependant relative accommodation (Granny Annexe), such ancillary accommodation, should only provide limited accommodation and it should share facilities with the main property (e.g., kitchens, outside amenity space, parking) and be physically linked.
9. The case is put that the proposed annex would be occupied by an elderly relative of the appellant and be related to the use of the host dwelling through the shared use of the garden, access, and service utilities. However, whilst there would be some shared elements between the two, including the access and outdoor space, the proposed annex would not be an extension or physically linked to the existing host dwelling. Rather, it would be a detached building separated by some distance, at the end of its garden, and comparatively closer to neighbouring properties than the host dwelling.
10. In addition, there are no proposed pedestrian pathways between the host dwelling and the annex and, the annex building would have no windows on the side elevation that face the host dwelling. Overall, therefore, there would be limited physical links or opportunity for inter-visibility between the annex and the host dwelling, undermining the sense that there would be a shared relationship or dependence between the occupiers of the two.
11. The scale, design, and layout of the proposed annex would have the appearance of an independent single storey bungalow. It would have two double bedrooms, a bathroom, and a large kitchen/diner/living room space, making it capable of independent occupation. The overall floor area of the annex would be large, having a larger ground floor area compared to that of

the original host dwelling and other surrounding dwellings, including the neighbouring bungalow and cottage attached to the host dwelling.

12. Whilst no means of enclosure is proposed, the lines and shading indicated on the block plan are suggestive of a potential separation between the proposed annex and the host dwelling. Should there be any physical separation between the host dwelling and the annex, it would further emphasise the two as distinct and unrelated elements. Also, it is not clear from the proposed site block plan and other evidence provided whether the existing site access and driveway would remain. The proposed site and block plans show the access in a different location to the existing access to the host dwelling, which is located closer to the eastern boundary with the neighbouring bungalow. If this were to be retained and the new proposed access implemented, then there could be a separate means of vehicular access to the proposed annex. This would enable the annex to be occupied as a separate independent dwelling.
13. I have considered whether a condition or the submitted UU could prevent the use of the proposed annex as an independent dwelling. However, the UU does not include a restriction on whether the annex could be sub-let or rented. A condition to restrict the ancillary use and/or occupancy of the annex would not prevent it from being used as an independent dwelling, as no physical alterations would be required to change its use or occupancy. As a result, compliance monitoring and enforceability of such a condition would be onerous and impractical and, accordingly would not meet the relevant tests for conditions, as set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. Thereby, the UU would not make the proposed development acceptable, nor would it be possible to address the unacceptable impacts caused through a planning condition.
14. Drawing all of the above together, I consider that the proposal would not provide only limited accommodation and would not be physically linked to the host dwelling and could be easily severed, therefore it would be tantamount to a new dwelling in the open countryside.
15. Furthermore, I have limited evidence before me on the level of services and facilities in Astley Burf, which I observed to benefit from a public house but no shop or school. Also, there do not appear to be any public transport links within the village and cycling and walking would likely be via country lanes. Therefore, accessing services and facilities to meet day-to-day requirements would most likely require reliance on private vehicle. Notwithstanding that opportunities to maximise sustainable travel solutions vary between urban and rural areas, the appeal site would not be located where it would offer sustainable travel choices.
16. The proposal would therefore conflict with Policies SWDP 1, SWDP 2, and SWDP 4 of the SWDP, which promote sustainable forms of development, including that new dwellings are restricted in open countryside and in locations where there would be available sustainable travel choices.

Character and appearance

17. Holly Cottage is a semi-detached traditional brick cottage that has a low ridgeline and eaves level, with small dormer windows and a large chimney stack to the side. The typical grain of development along Hampstall Lane is defined by residential properties addressing onto the road, with gardens

extending behind. Holly Cottage is surrounded by other residential properties and set back from Hampstall Lane by a small, enclosed garden area with steps leading from the lane up to its main entrance. To the side and rear is a large garden interspersed with vegetation, including some trees. The land levels rise from Hampstall Lane making the open and verdant nature of the garden plot prominent, which makes a positive contribution to the character and appearance of the surrounding area.

18. Holly Cottage is identified on the Council's Historic Environment Record (HER) as a non-designated heritage asset. Whilst there are numerous later buildings in the vicinity of the appeal site and Astley Burf, Holly Cottage is notable as an example of a traditional rural cottage. That, despite a large extension at the rear, is notable as an attractive older building that has retained its authentic rural characteristics and modest overall proportions. Furthermore, the large verdant garden plot, boundary planting and vegetation within the site all contribute to providing Holly Cottage with a green and open setting, which contributes to its significance as a non-designated heritage asset.
19. The appeal site slopes up from Hampstall Lane quite considerably and the proposed annex building would be located at a higher point within the site. The ground level where the annex is proposed is also much higher than the road level and in particular, neighbouring dwellings to the east. Whilst the annex would be single storey, due to the elevated ground levels of the appeal site compared to its surroundings, the proposal would be visible from neighbouring dwellings and in glimpses from the wider street scene along Hampstall Lane.
20. However, the roof of the annex would be seen in the context of the roofs of other nearby dwellings. Also, the proposal would be single storey, set in from the site boundaries and not overly prominent from public vantages. Nevertheless, the proposed annex would occupy a significant proportion of the rearmost part of the garden. The introduction of such a large structure within the rear garden of Holly Cottage would not only be at odds with the predominate local development pattern along Hampstall Lane, it would also weaken the open, verdant garden setting to Holly Cottage that is of value to its significance as a non-designated heritage asset.
21. In view of the above, I consider that the proposed development would have a harmful effect on the character and appearance of the host dwelling and the character of the surrounding area. Additionally, the proposal would cause harm to the significance of Holly Cottage as a non-designated heritage asset through development within its setting.
22. The proposal would therefore conflict with Policy SWDP 21, which requires, amongst other matters, that development integrates effectively with its surroundings, in terms of form and function and, conserves and where possible, enhances the setting of historic assets. Also, there would be conflict with Policies SWDP 6 and SWDP 24 of the SWDP, which require development to conserve and enhance the significance of heritage assets, including their setting. For the same reasons, the proposal would also be contrary to the guidance contained in the SWDG Supplementary Planning Document.

Living conditions

23. To the east of the appeal site land levels fall away quite considerably with neighbouring dwellings set at a much lower ground level. The Swallows, which would be the closet neighbouring dwelling to the proposed annex, is a stepped, dual-level property, with the nearest element of the dwelling and private patio area, set at a higher level than the road, only slightly lower than the ground level of the appeal site. Also, there is a close boarded boundary fence separating the properties.
24. Due to the higher ground level of the proposed annex compared to the ground level of The Swallows, the roof of the proposed annex would be visible from this neighbouring property. However, due to the proposed set back from the shared boundary and juxtaposition of the proposed building to The Swallows, it is unlikely that it would create an overly dominant feature, when viewed from this dwelling.
25. Furthermore, the combination of the single storey scale of the proposed annex, that it would be set back a reasonable distance from the boundary, with its roof sloping away, and that there is an intervening approximately 1.8m boundary fence, would ensure there would be no unacceptable overbearing impact on the occupiers of The Swallows.
26. The only window/glazed door on the side of The Swallows, which could be affected by the proposal, is set perpendicular to and further away from the appeal site boundary. Accordingly, any sight lines from inside this neighbouring property would not directly look out towards or be interrupted by the proposed building. In addition, due to the set in from the boundary and the general western juxtaposition of the proposed building to The Swallows, the proposal would not cause overshadowing to this property.
27. In view of the above, the proposal would not cause harm to the living conditions of the occupiers of The Swallows in regard to outlook and overshadowing. Therefore, in respect of this main issue, there would be no conflict with Policy SWDP21 of the SWDP or the guidance contained within the South Worcestershire Design Guide, Supplementary Planning Document, which require, amongst other matters, that new development provide adequate outlook for and is not unduly overbearing on neighbours.

Other Matters

28. In reaching my decision, I have been mindful that in *Uttlesford DC v SSE & White* (1992) the judge considered that, even if the granny annexe accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the host dwelling. The circumstances are therefore not comparable to the proposal before me which, I consider would not provide a demonstrable degree of connectivity. In any event, there is inevitably a question of fact and degree and I have made my decision based on the merits of the proposal and site-specific circumstances before me.
29. In respect of the appeal decision at Lingholm, Shrewsbury, I note the proposed annex had a footprint much smaller than the host dwelling and it was found to be subordinate to the main dwelling in terms of its siting and scale. This together with other matters was a contributing factor in the Inspector

concluding the proposed annex would not be tantamount to an independent dwelling. The appeal proposal is not therefore comparable to this example, as the context and proposal differ. It is also noted the Inspector found that a condition to restrict ancillary occupancy of the annex would make that proposal acceptable. I have however considered the individual merits of the proposal and evidence before me and, consider such a condition would not meet the relevant tests in this instance.

Planning balance

30. The elderly parent of the appellant who would occupy the annex is noted to be currently capable of looking after themselves but, would benefit from being close to their family. Also, I note the proposed size and internal layout has been designed to meet the potential future need for a live-in carer for the relative. I have not however been provided with any substantial evidence in terms of the need for the building, the particular health and well-being benefits and requirements to meet the future unknown needs of the elderly relative. I therefore attribute little weight to these matters.
31. Whilst the Council's tree and highways officers raise no objections to the proposal, this has neutral weight, as such matters do not relate to the main issues of concern. Also, whilst the Council's Conservation Officer had not commented on the application by the time the appeal was made, this cannot be construed as them having no concerns. Whilst I have not found harm in relation to living conditions, I have however found that there would be harm caused to the character and appearance of Holly Cottage and its setting, which would be harmful to its significance.
32. The proposal would be tantamount to a new dwelling in the open countryside that would not be located where it would offer sustainable travel choices. These are factors that lead to conflict with the development plan and the Framework and weigh heavily against granting planning permission.

Conclusion

33. On balance, I find that the proposed development conflicts with the development plan and that material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.
34. For these reasons, I conclude that the appeal should be dismissed and planning permission is refused.

C Billings
INSPECTOR