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## Appeal Decisions

Site visit made on 23 January 2024

**by S A Hanson BA(Hons) BTP MRTPI**

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

**Decision date 11 March 2024**

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**Appeal A Ref: APP/H1840/C/23/3323911**

**Appeal B Ref: APP/H1840/C/23/3323912**

**Appeal C Ref: APP/H1840/C/23/3323913**

**Appeal D Ref: APP/H1840/C/23/3323914**

**Orchard Crest, Cleeve Road, Middle Littleton, Evesham, Worcestershire  
WR11 8JT**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Nicholas Axworthy, Appeal B is made by Mrs Clare Axworthy, Appeal C is made by Mr Jake Axworthy and Appeal D is made by Ms Weronika Jasek against an enforcement notice issued by Wychavon District Council.
  - The notice was issued on 5 June 2023.
  - The breach of planning control as alleged in the notice is: The unauthorised development consisting of the erection of an outbuilding.
  - The requirements of the notice are to: 1. Dismantle and remove the building approximately hashed blue on the attached plan from the property known as Orchard Crest, Cleeve Road, Middle Littleton, Evesham WR11 8JT approximately outlined in red on the attached plan. 2. Remove all materials and paraphernalia associated with the building approximately hashed blue on the attached plan from the property known as Orchard Crest, Cleeve Road, Middle Littleton, Evesham WR11 8JT approximately outlined in red on the attached plan.
  - The period for compliance with the requirements is: 4 (four) months.
  - Appeal A is proceeding on the grounds set out in section 174(2)(a), (e), (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
  - Appeals B, C and D are proceeding on the grounds set out in section 174(2)(e) and (f) of the 1990 Act.
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### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the erection of an outbuilding at Orchard Crest, Cleeve Road, Middle Littleton, Evesham WR11 8JT as shown on the plan attached to the notice.

### Application for costs

2. An application for costs was made by Mr Nicholas Axworthy, Mrs Clare Axworthy, Mr Jake Axworthy and Ms Weronika Jasek against Wychavon District Council. This is the subject of a separate decision.

### **Appeals A, B, C and D on ground (e)**

3. This ground of appeal is that copies of the notice were not served as required by s172 of the Act. The onus is on the appellant, in this case the owners and occupants of the appeal property, to prove their case. Section 172(2) of the Act provides that a copy of the notice shall be served on the owner and occupier of land to which it relates, and any other person having an interest in the land, including mortgagees, tenants and sub-tenants, being an interest which, in the opinion of the local planning authority (LPA), is materially affected.
4. Section 329 of the Act sets out the legal framework for the service of a notice. Amongst its terms, sub-section (1)(b) states this can be done "by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address". For its part, the Council had previously served a notice dated 11 May 2023 for the same development. Having identified defects with the notice, the notice was withdrawn, and a revised notice was issued on 5 June 2023. It is this notice which is the subject of the appeal.
5. While the appellants accept that the notices, which had been re-issued following concerns with validity, were re-issued correctly, the appellants' appeal under ground (e) is stated as being 'in light of the fees incurred', no further information is provided. If the appeal fee has been paid twice, the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (12) states that any fee paid by an appellant in respect of a deemed application shall be refunded to the appellant in the event of the LPA withdrawing the relevant enforcement notice before it takes effect or if the Secretary of State decides that the enforcement notice is a nullity.
6. From the evidence presented for the appeal under ground (e), I am satisfied that the council served the notice correctly and the appellants have submitted their appeal against the notice within the timeframe and have had an opportunity to argue their case fully during the appeal proceedings. It cannot, therefore, be said that the appellants have suffered any substantial prejudice.
7. Therefore, for the reasons given above, I conclude that the appeal on ground (e) does not succeed.

### **Appeal A on ground (a) and the deemed planning application**

#### **Main Issue**

8. The main issue is the effect of the outbuilding on the character and appearance of the street scene and the surrounding area.

#### **Reasons**

9. The appeal relates to a single storey outbuilding that has been erected within the domestic curtilage of Orchard Crest, a detached single storey dwellinghouse. The appeal site is located within the village of Middle Littleton and outside the development boundary identified in the South Worcestershire Development Plan (SWDP).

10. The outbuilding is described by the appellant as an annexe which has been constructed in the front garden of the host dwelling, close to the boundary with the public highway. The building is detached and measures 7.4m x 4.9m. It has a dual pitch roof with a maximum height of 4.02m and is constructed of sectional, structural panels and clad in Cedar. It is said to be connected to the main house for its water, electricity and internet supplies. Originally erected to provide housing as a response to the call for 'Homes for Ukraine', the building is now occupied by the appellant's son and his son's partner. The outbuilding is used in an incidental manner in association with the primary residential use of the main dwellinghouse.
11. The reasons for issuing the notice refer to the significant visual impact the outbuilding has on the street scene by reason of its size and design. This is considered to result in an incongruous form of development which fails to positively respond to its surrounding and is therefore defined as harmful to the rural character and appearance of the area.
12. The Council's Design Guide Supplementary Planning Document (adopted March 2018) (SPD) provides guidance on, amongst other matters, buildings within the residential curtilage, such as, garages, sheds and greenhouses. It states that such buildings can often require as much care in siting and design as works to the existing residential property. It also advises that they should be subordinate in scale and similar in style to the existing property, taking account of materials, the local character and the level of visibility of the building from surrounding public areas.
13. Garages and/or outbuildings located in front gardens or those that extend in front of the established building line are highlighted as needing careful consideration to not over-dominate the front of the property and detract from the street scene. The SPD informs that as well as adhering to the general design principles for outbuildings/garages, the building should be sited close the main residential property, have a size and scale to reflect its ancillary function, have a shared curtilage and shared facilities.
14. The appeal site is situated on the west side of Cleeve Road, a B-class road to the north of the village centre. Its character is defined by housing of contrasting styles, design and materials to either side of the road. Properties on the west side are mostly single storey and set further back in their plots with frontages mostly enclosed by vegetation and fences. Landscaping to the front of these houses serves as a verdant screen and softens the built form in this semi-rural setting. Views along the road are affected by boundary walls, fences and mature planting, which limit the ability to see property frontages in a single vista.
15. To the east side of the road and within the immediate vicinity of the appeal site, there is a row of four pairs of semi-detached two-storey houses which pre-date the development to the west. These display a more uniform architectural style and are set further forward in their plots. Frontages are noticeably more open with lower-level boundary treatments.
16. Orchard Crest, the host dwelling is set back from the road frontage with a drive which allows for parking, and an area of garden on which the appeal outbuilding has been erected. The outbuilding is of a simple form, modest in size with a footprint comparable to a double garage. At the time of my visit, in

the winter months, there was significant screening provided by a mature landscaped boundary and a low level close boarded fence. While the building is positioned to the front of the plot and close to the highway, it is not readily visible from the public domain.

17. Notwithstanding this, the outbuilding is of a form which is subordinate in scale and reflects elements of the design of the host property. It sits within the limited curtilage and relatively close to the front of the dwelling and clearly forms part and parcel of the dwellinghouse. Although buildings within the frontage of properties in the immediate surroundings are not overly characteristic, I consider that in the context of the surrounding residential setting, the development is not an incongruous addition that diminishes the local character of the area.
18. While I appreciate that landscape planting provides screening to an extent and it may be transient, it is likely that the appellant would choose to retain the substantial landscape boundary to restrict views into the site, particularly as there are windows on the roadside elevation of the building. I also note the appellant's willingness to maintain and supplement the boundary with further screening and planting.
19. For the reasons outlined above, I conclude that the outbuilding which is used solely for purposes incidental to residential use of the main dwellinghouse is not visually harmful or detrimental to the character and appearance of the street scene or the surrounding area. Consequently, I find no conflict with the design, character and appearance aims of Policy SWDP 21 and guidance contained within the National Planning Policy Framework and the Council's SPD.

### **Conditions**

20. The development is in situ and therefore a condition requiring the development be implemented within three years and built in accordance with approved plans is not necessary. No conditions have been suggested by the Council and there are none that are considered reasonable and necessary for the development.

### **Conclusion**

21. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the outbuilding as described in the notice. The appeals on ground (f) do not therefore fall to be considered.

*S A Hanson*

INSPECTOR