



Appeal Decision

Site visit made on 26 March 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024

Appeal Ref: APP/P1133/W/23/3329708

6 Rowan House, North Street, Denbury, Devon TQ12 6DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Burford against the decision of Teignbridge District Council.
 - The application Ref is 23/00975/VAR.
 - The application sought planning permission for detached oak framed single storey garden outbuilding without complying with a condition attached to planning permission Ref 20/02140/HOU, dated 14th January 2021.
 - The condition in dispute is No 5 which states that: *The use hereby approved shall be used solely as (home office, home gym and garden room/summer house) incidental and in connection with the existing host dwelling (6 Rowan House, Denbury) and shall not be used, let, leased or otherwise disposed of for any other purpose.*
 - The reason given for the condition is: *The use has been approved on the basis of the planning unit described in the application and not for any other subdivision.*
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Decision

1. The appeal is allowed and planning permission is granted for detached oak framed single storey garden outbuilding at 6 Rowan House, North Street, Denbury, Devon TQ12 6DJ in accordance with the application Ref 23/00975/VAR, without compliance with condition number 5 previously imposed on planning permission Ref 20/02140/HOU dated 14th January 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 43923 01 Site Local Plan; 43923 02 Block Plan; 3280 01 Proposed (elevations/floor plan).
 - 2) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 6 Rowan House, North Street, Denbury, Devon TQ12 6DJ.

Applications for costs

2. An application for costs is made by Mr & Mrs Burford against Teignbridge District Council. The application is the subject of a separate decision.

Preliminary Matters and Background

3. Planning permission was granted for a garden outbuilding. Condition 5 of that permission restricts the use of the outbuilding solely as a home office, home

gym and garden room/summer house incidental and in connection with the existing host dwelling.

4. The appellant wishes to include reference to a bedroom and bathroom within this condition which they say is required to accommodate an elderly relative. This need is not disputed by the Council. The Council is however concerned that the proposed variation of condition would result in more than a single household and the creation of a new dwelling capable of independent occupation in a restricted countryside location.
5. I note the Council draws comparisons between incidental and ancillary uses. I have however determined the appeal on the basis that an ancillary use is proposed.
6. The appellant did not specifically seek to vary the plans condition. However, section 73 allows me to modify versions of those conditions previously imposed. I shall return to this matter later.

Main Issue

7. The main issue is whether the proposed variation of condition would give rise to the creation of a new dwelling, and if so, whether the site is a suitable location having regard to the provisions of local policy.

Reasons

8. The appeal site comprises a large outbuilding within the extended garden of the main property known as 6 Rowan House. Although set to the rear of the immediate smaller walled garden of the main property, the appeal building is within an associated area that has the benefit of a lawful certificate as domestic garden.
9. The appeal building is visible from the street, with the main property in the foreground. The two buildings maintain a close physical and visual link via a shared gravelled track, which is levelled. Notwithstanding the Council's concerns in respect of the distance between buildings and an intervening property, my on-site observations were that the connectivity between buildings would be unobstructed and easy for an elderly person to navigate.
10. Positioned outside any recognised settlement boundary, the appeal building is surrounded on several sides by other properties and is well enclosed by established walled/hedge boundaries. Furthermore, the shared parking and winding gardens do not give the impression that the appeal building is severed from the main property or that it does not physically function as part of one planning unit.
11. Even though the appeal building is restricted to its current use, it is particularly large and contains several rooms within. This combination and flexibility of space under one roof would be likely to generate a far greater intensity of use throughout the year than one might expect from a small garden shed for example. This is consistent with my site observations where the spacious building appeared to be used as an office, gym and summer room. In that context, the additional bedroom and bathroom would intensify the use of the appeal building. Additionally, I observed that there was a basic small kitchen area, though notably, without a sink or permanent cooking facilities. As such,

the intended occupant would probably be more inclined to take meals with the family in the main dwelling.

12. This, together with the aforementioned shared use of the wider appeal site, would mean that the building is capable of being occupied as an annexe. Occupants would be likely to live as part of the household in the main house. Furthermore, the proposed broadening of the use of the appeal building would not result in a noticeably more intensive or harmful change when compared with the existing permission.
13. In any case, a new dwelling has not been applied for. If the building is not constructed or used as proposed, or if there is a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required. Additionally, the building would be at risk of enforcement action if such permission is not granted.
14. For the above reasons, the proposed variation of condition would not give rise to the creation of a new dwelling. As such there would be no conflict with policies S21A and S22 of the Teignbridge Local Plan 2013-2033, May 2014 (LP) which, together in this respect, seek to restrict development outside defined settlement limits.

Other Matters

15. There is a grade II listed building near the appeal building and consequently there is a statutory duty to pay special regard to the desirability of preserving its setting. No 6, North Street is a grade II listed property where its significance derives from its early 19th century origins. The appeal building is already built and as such, the alteration to its use would have no harmful effect on the setting or significance of the listed building.
16. The Council has referred to the case of *Carter v South Bucks DC* [2011] where it was concluded that a new planning unit had been created. Based on the limited information provided, that site was materially different to this in that it was separated from the host property by fencing, trees and shrubs with no footpath linking the buildings.
17. The Council notes that the development is located within the Landscape Connectivity Zone for Greater Horseshoe Bats associated with the South Hams Special Area of Conservation, but that it would be unlikely to have significant effect on it, and consequently, no habitats regulations assessment would be required. I have no reason to disagree with the Council.
18. The Council is concerned that extensive landscaping works have been carried out, including the widening of the access. However, any such alterations are not within the scope of this appeal. This would be a matter for the main parties. Additionally, although generous, access appeared to reflect an existing arrangement for the main property. In that context, I have concluded that no new dwelling would be created. Notwithstanding the County Highways advice, I have been provided with no compelling evidence to demonstrate there would be conflict with Policy S2 of the LP.

Conditions

19. By allowing this appeal a new planning permission is created. The National Planning Practice Guidance advises that, for clarity, decision notices for the

grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.

20. As the development has already started it is unnecessary for me to attach the commencement of development condition. In that context, materials and roofing conditions have been discharged and are not necessary.
21. In the interests of clarity, I have imposed a plans condition that includes the proposed layout with a bedroom and bathroom. As the Council's submissions show that this plan formed part of their overall assessment of the scheme, I am satisfied that no one would be prejudiced by me re-imposing an amended plans condition.
22. A condition restricting occupancy as ancillary accommodation is necessary to prevent the establishment of an unrestricted dwelling in a countryside location. In this respect, I have not imposed the Council's suggested additional wording to the condition that says *the building shall not be used, let, leased or otherwise disposed of for any other purpose*. As I have already mentioned in the main decision above, this is because any other use than ancillary would require the separate grant of planning permission. Moreover, the occupancy condition, as worded, avoids repetition. It is sufficiently clear and precise.
23. I have not imposed the Council's suggested landscaping condition as established landscaping is already in place. Furthermore, the use of the building for ancillary purposes would not require additional planting to make the development acceptable in planning terms.
24. I have made some amendments to the Council's original conditions in the interests of clarity and to ensure compliance with the Framework.

Conclusion

25. For the reasons given I conclude the appeal should be allowed for the grant of a new planning permission with varied conditions as set out in the formal decision.

J Hills

INSPECTOR