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## Appeal Decision

Site visit made on 7 March 2024

**by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI**

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

**Decision date: 1<sup>st</sup> May 2024**

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**Appeal Ref: APP/U2750/D/23/3332249**

**Orchard Farm, Whitwell, North Yorkshire DL10 6BB**

- 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 P Merson against the decision of North Yorkshire Council
  - The application Ref: ZB23/01411/FUL dated 6 July 2023, was refused by notice dated 15 September 2023.
  - The development proposed is described as conversion, extension and alteration of an existing domestic outbuilding to provide additional living accommodation.
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### Decision

1. The appeal is allowed and planning permission is granted for the conversion, extension and alteration of an existing domestic outbuilding to provide additional living accommodation at Orchard Farm, Whitwell, North Yorkshire DL10 6BB in accordance with the terms of the application, Ref: ZB23/01411/FUL dated 6 July 2023, and the plans submitted with it, 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: Drawing No's: Location plan 220106-14; Site Elevations 220106-22; Proposed Elevations 220106-21; Proposed Floor Plan 220106-20 and Site plan 220106-23.
  - 3) The materials to be used in the construction of the brickwork of the development hereby permitted shall match those used in the existing building.
  - 4) The accommodation hereby approved shall not be occupied at any time as a separate independent dwelling and shall remain ancillary to the residential use of the main dwelling known as Orchard Farm.

### Main Issues

2. The main issues in this appeal are (i) whether the proposed development would be ancillary to the main dwelling; and (ii) the effect of the proposed development on biodiversity.

### Reasons

*Ancillary*

3. The appeal site is within a rural location comprising a farmhouse which is a large detached two storey property with outbuildings around an adjacent courtyard. Other rural outbuildings are within the immediate area and the site surrounded by open fields.
4. My attention has been drawn to a previous planning permission<sup>1</sup> relating to the conversion of the outbuilding to annex. I understand that the difference between the approval and the proposal before me is the inclusion of an art/hobby room and an extension to the southwest elevation.
5. Policy E1p of the Hambleton Local Plan (2022) supports detached residential annexes where the annexe is within the curtilage of the main dwelling, visually subordinate to the main dwelling, sited to ensure a clear functional link between the annexe and the main dwelling and shares the same access, parking and garden areas.
6. The proposed annexe would be single storey comprising living room, art/hobby room, two bedrooms, bathroom and plant room. The art/hobby room contains a workbench and sink as such this could theoretically be used as a kitchen. This configuration would establish the annexe as a fully self-contained residential unit with independent facilities for day-to-day living.
7. While annexes can offer all amenities for habitation, they must functionally be part of the same residential planning unit as the main property.
8. The current occupants of the main property would reside in the annexe with their daughter and her family occupying the main property. Cooking would be shared, and that if required support or care for family members would be provided.
9. The annexe would share existing gardens, access, car parking, outbuildings, and utilities with the main property. Similar to the planning permission approved for an annexe at the appeal site which was deemed to comply with policy. I consider these functionally link the annexe to the main property.
10. In terms of the form of the annexe whilst the proposed extension is large in comparison to the existing outbuilding it is well designed complimenting the existing outbuilding and visually would appear subordinate to the main property.
11. The distance between the proposed annexe and the main property has not changed from the original permission. The use of an outbuilding separate from the main property as an annexe is not unusual. The roofed pergola provides a degree of visual connection to the annexe from the main property.
12. A planning application for a residential annex was submitted to the local Council. The application was classified as a householder development and deemed valid on this basis. Conditions can control who occupies the building. Creating a separate dwelling would require planning permission, as a change of use. On this basis Policies S5 and HG4 of the Local Plan are not relevant to the proposed development.
13. The proposed development would result in an annexe that is ancillary to the main property. It would not constitute a separate independent dwelling. There

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<sup>1</sup> Ref: 23/00054/FUL

is no conflict with Policy E1 of the Local Plan which seeks amongst other things to ensure annexes are physically, visually and functional ancillary to the main property.

### *Biodiversity*

14. Policy E3 of the Local Plan expects all development to demonstrate the delivery of a net gain for biodiversity. It is clear in National Planning Policy Guidance<sup>2</sup> that decision makers should not give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework.
15. The exemptions are set out in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024. The biodiversity gain condition does not apply to householder development, as defined within Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The proposed development is householder development.
16. I note that the proposal was submitted prior to the enactment of biodiversity net gain framework. Notwithstanding this, I also understand that the previous approval was determined under the same Local Plan policies and did not require a Biodiversity Net Gain.
17. Whilst the proposal would not comply with Policy E3 of the Local Plan in this instance given the previous approval I consider it would be inappropriate to continue to give weight to aspects of the existing local policy related to biodiversity gains which is inconsistent with the statutory framework for biodiversity net gain.

### **Conclusion and Conditions**

18. For the above reasons I conclude that this appeal should be allowed.
19. I have imposed conditions relating to the standard time limit for commencement of development and plans to be adhered to as this provides certainty. I have also added a condition concerning materials to ensure a satisfactory appearance.
20. I have imposed a condition requiring the proposed development to be ancillary to the main dwelling and not be used as a separate property in the interests of protecting the countryside from inappropriate development.

*C Pipe*

INSPECTOR

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<sup>2</sup> Paragraph: 020 Reference ID: 74-020-20240214