

REPORT OF THE DEVELOPMENT MANAGEMENT MANAGER

22/00687/HOUSE - Retention of building for use as additional living accommodation at Old Parsonage, High Street, Hemyock, Cullompton.

Reason for Report:

At the Planning Committee meeting on 27th July 2022, Members advised that they were minded to refuse the above application and invited an implications report for further consideration.

RECOMMENDATION(S)

Grant planning permission subject to conditions.

Relationship to Corporate Plan:

Homes

- Planning and enhancing the built environment

Environment

- Protect the natural environment

Financial Implications:

An appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal—in line with the development plan and all other material considerations.

Legal Implications:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on the 27th July 2022 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal.

Risk Assessment:

If Committee decide to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful appeal costs claim against the Council for reasons of unreasonable behaviour.

Consultation carried out with:

Statutory Consultees

The implications of refusing the application:

At the meeting on the 27th of July 2022, members gave consideration to:

- As it was an ancillary building it could be permanently occupied
- National space standards did not apply as the building was not an independent dwelling
- That there was a proposed condition that as ancillary accommodation that no part could not be let or otherwise disposed of as a separate unit
- It was not felt that the building over shadowed the neighbouring property
- That the building could not be extended in the future without planning permission
- The views of the objector who stated that the main issues were the size of the building and the noise coming from it. He felt that the building was an over development of the site and if the property was sold in the future more noise may be heard from new occupants with children and teenagers
- The views of the Parish Council who stated that the building was not modest in size, it was located some distance from the main dwelling, it was over development and the application was retrospective. That the development had an adverse impact of the neighbours
- The views of the Ward Member who felt that the building did not represent the character, setting or design of the existing dwelling, it was over development of the property curtilage, there was a significant adverse impact of the living conditions of neighbouring properties and the design and location was not acceptable

The neighbour spoke as an objector to the application and a statement was read out on behalf of the ward member, Cllr S J Clist. It should also be noted that the applicant intended to speak at the meeting but has since informed officers that he was unable to sign in at reception and therefore did not make it to the meeting itself. He has instead emailed a statement and provided some supporting documentation which can be summarised as the following:

- That the house was originally purchased with a summer house in the rear garden;
- That the new summerhouse takes up a space of approx. 22%.
- There are no windows overlooking the neighbouring property.
- The distance from the rear door of Mr Andrews property to the summerhouse is more than 100 feet, 30.4 M away.
- A site visit (should it be necessary), is welcomed.
- The boundary treatments screen the development and can be screened via condition.

Following the discussion at the committee meeting, members then indicated they were minded to refuse the application and therefore wished to defer the application for consideration of an implications report to consider the proposed reasons for refusal. The reasons being:

- Contrary with Policy S1 –The application did not support sustainable development
- Contrary with Policy S13 - The application did not support sustainable development
- Contrary with Policy DM1 – The application did not support the principal of sustainable development
- Contrary with Policy DM5 – The application would cause future parking issues
- Contrary to Policy DM11 – The application causes the living conditions of the neighbours to be significantly harmed

One implication of a reason for refusal is that in the event of an appeal being made the Planning Inspector even if minded to dismiss the appeal could award a partial award of costs where they believe a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense. There are appeal decisions whereby the Inspector has concluded that sufficient evidence has not been provided in light of adopted development plan policies other than beyond very generalised assertions and therefore did not substantiate the reason for refusal and thus put the applicant to the unnecessary expense of preparing grounds of appeal and then final comments to rebut the reason.

In terms of the risk of an appeal being allowed, members should be aware of some previous applications for similar schemes which were refused and the Inspectorate found acceptable:

- 20/01155/HOUSE – Retention of Garden Room, 3 Bridge Cottages
- 20/01537/HOUSE - Retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes underground, Lower Millhayes, Hemyock

The Lapford application did not go before committee and is slightly different in that it was refused on the basis of its impact on heritage assets. However, it was a similarly sized building and was allowed at appeal with the Inspector finding that a building of this size would have no harm in terms of impacts on heritage assets or on neighbourhood amenity.

Members should be aware of the Lower Millhayes application which was refused by members at committee for its visual impact and neighbourhood amenity implications. However, the appeal was allowed. A costs appeal was also submitted, however, on this occasion the Inspector found that the Council had acted reasonably given the subjective views considered by members for the reason for refusal.

Such an appeal is very relevant to the subject application given the circumstances are indeed very similar. Both sites are within the Blackdown Hills AONB, both relate to a building in the rear garden of timber construction. The decision is appended to this report for ease of reference.

With this in mind, officers have provided discussion on concerns raised by Members at their previous meeting, your officers would advise as follows:

Contrary with Policies S1, S13 and DM1 – the application did not support sustainable development

Policy S1 sets out strategic priorities that will be needed to achieve and deliver key issues in Mid Devon and states that development will be expected to support the creation of sustainable communities according to a number of principles including:

“A development focus at Tiverton, Cullompton and Crediton as Mid Devon’s most sustainable settlements, with long-term growth to the east of Cullompton and a limited level of development in identified villages;”

And

“Requiring good sustainable design that respects local character, heritage, surroundings and materials, creates safe and accessible environments, designs out crime and establishes a strong sense of place;”

This is further unpicked in Policy DM1 which states that designs of new development must be of high quality, based upon and demonstrating a number of principles including:

“a) Clear understanding of the characteristics of the site, its wider context and the surrounding area; b) Efficient and effective use of the site, having regard to criterion (a)”

And

“Visually attractive places that are well integrated with surrounding buildings, streets and landscapes, and do not have an unacceptably adverse effect on the privacy and amenity of the proposed or neighbouring properties and uses, taking account of

- i) Architecture*
- ii) Siting, layout, scale and massing*
- iii) Orientation and fenestration iv) Materials, landscaping and green infrastructure”*

Similarly, S13 identifies rural settlements such as Hemyock as suitable for limited development for:

*“a) Small scale housing, employment, tourism and leisure;
b) Services and facilities serving the locality; and
c) Other limited development which enhances community vitality or meets a local social or economic need.”*

Therefore, officers take the view that the principle of development is established under these policies. However, policies S1 and DM1 in particular gives consideration of matters such as design, as cited above. Design with regards to local character, accessible environments, creating a sense of place and visual attractiveness can be considered a subjective matter and members are perfectly entitled to take a different view to officers on these matters. Despite the officer's recommendation, the proposed building is visible from neighbouring properties and members are entitled to take the view that the design does not represent sustainable development contrary to policies S1 and DM1 of the Local Plan.

However, S13 is less prescriptive in terms of design and more generally outlines the sorts of development permissible in defined villages such as Hemyock. This includes small scale residential development.

With this in mind, your officers do not consider that a reason for refusal in relation to sustainable development, citing Policy S1 would be unreasonable, however, would not recommend including S13 in the reason for refusal given its less prescriptive nature in terms of design.

Contrary with Policy DM5 – The application would cause future parking issues

Policy DM5 of the Local Plan refers to parking provision for development and sets out the required levels of parking for different use classes. For a C3 dwellinghouse, there should be 1.7 parking spaces per dwelling – this is rounded up to 2 in the instance of one dwelling.

Members wish to refuse the application on the basis that there would be parking issues as a result of the annexe. However, an annexe is ancillary accommodation and not an independent dwelling in its own right. Therefore, there is no requirement for an increase in parking spaces and the existing parking arrangement is not impacted as a result of the development. The fact that an annexe is not an independent dwelling and the parking requirements set out in DM5 are not subjective and are matters of fact. As such, officers recommend that this reason for refusal could be considered unreasonable and is not likely to

be supported by a Planning Inspector should Members refuse the application and the applicant appeal.

Contrary to Policy DM11 – The application causes the living conditions of the neighbours to be significantly harmed

Policy DM11 requires that extension to existing dwellings and other ancillary development will be permitted provided that they will not have a significantly adverse impact on the living conditions of occupants of neighbouring properties.

In respect to the impact of the proposed development on residential amenity of the neighbouring occupiers, in particular the occupier of, Old Parsonage, your officers would advise that the proposed screening would prevent any significant overlooking and can be secured via condition. It was also advised that the building was only marginally taller than what could be achieved under permitted development (if it was not an annexe) so officers were not concerned with regards to any potential loss of light or overbearing impacts in terms of the height and form of the building.

Officers were also of the view that any noise produced from the annexe would be typical of neighbourly relations and could be controlled under separate Public Health legislation so, on balance, did not recommend refusal based upon neighbourhood amenity and DM11. However, whilst it is not considered by officers that the proposal would create significant harm, for the reasons identified above, it is acknowledged that there will be some impacts from general disturbances due to the presence close to the boundary and the fact the building will be a visible feature, as would any outbuilding. As with design and visual impact discussed earlier in this report, there is an element of subjectivity in assessing impact on residential amenity, and identifying what level of impact or harm can be considered 'significant'. As such, it is perfectly reasonable for Members to come to a different conclusion compared with the officer's recommendation.

With the above in mind, your officers consider that a reason for refusal based on general living conditions and neighbourhood amenity could perhaps be substantiated and would not be unreasonable. Members are however advised to take into consideration as part of their decision to consider the recent appeal decisions noted at the beginning of this report, which were of similar circumstance and how the Inspector allowed the appeal.

Reason for Refusal

Members are advised that while the officer's recommendation is one of approval, some of the matters discussed are subjective, particularly those in relation to sustainable development and significant adverse impacts. Notwithstanding officer's views and the planning history set out in this report, in neither case is it considered unreasonable for Members to come to a different view of the recommending officer, provided that these concerns have been properly debated and cogently articulated in the reasons for refusal.

However, the issue surrounding car parking is not considered to be subjective and is a matter of fact. It is therefore recommended that including such a reason for refusal could be considered unreasonable behaviour.

If, having considered all the above further, Members still consider that the proposal should be refused, then consideration should be given to the following reasons for refusal:

1. The proposed annexe, by virtue of its position, scale and design would result in significant adverse impacts upon the amenity of residents of nearby properties contrary

to policies S1, DM1 and DM11 of the Mid Devon Local Plan (2013-2033) and guidance in the National Planning Policy Framework.

2. The proposed annexe would result in a requirement for increased car parking in the area which has not been provided as part of this application. It is therefore considered contrary to policy DM5 of the Mid Devon Local Plan (2013-2033) and guidance in the National Planning Policy Framework.

As above, officers recommend that reason one is subjective and less likely to be considered unreasonable, however, reason two is a matter of fact and more likely to be considered unreasonable.

Contact for any more information

Jake Choules

Background Papers

Application file and previous committee report

File Reference

22/00687/HOUSE

Circulation of the Report

Planning Committee Members



Appeal Decision

Site visit made on 15 November 2021
by Mrs H Nicholls FdA MSc MRTPI
an Inspector appointed by the Secretary of State
Decision date: 30 November 2021

Appeal Ref: APP/Y1138/D/21/3280155

19 Lower Millhayes, Hemyock EX15 3SL

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 Miss Marie Ingersoll against the decision of Mid Devon District Council.

The application Ref 20/01537/HOUSE, dated 14 September 2020, was refused by notice dated 18 June 2021.

The development proposed is retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes underground.

Decision

1. The appeal is allowed and planning permission is granted for retention of timber outbuilding to be used ancillary to the main house, retention of decking and proposed installation of water supply and drainage pipes underground at 19 Lower Millhayes, Hemyock, EX15 3SL, in accordance with the terms of the application, Ref 20/01537/HOUSE, dated 14 September 2020, and subject to the conditions in the schedule below.

Preliminary Matters

2. The description of development has been taken from the Council's decision notice as it more concisely describes the proposed development.

3. I saw from my site visit that the building detailed in the plans was already constructed and that an area of decking was situated in front of it, though this appeared to have been recently reduced in size and partly replaced with patio slabs at a lower level. From the evidence, I am aware that the proposal includes further adaptations to the building and the provision of water and drainage infrastructure.

Application for costs

4. An application for costs was made by Miss Marie Ingersoll against Mid Devon District Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effects of the proposal on i) the character and appearance of the area and ii) the living conditions of neighbouring occupiers at Nos 18 and 20 Lower Millhayes, with particular regard to privacy and outlook.

Reasons

Character and appearance

6. The appeal site is formed from the rear garden of No 19 Lower Millhayes, the host dwelling, which is semi-detached, two storeys high and situated in a linear arrangement of similar dwellings which all have long rear gardens enclosed by fencing. The gardens all rise up moderately at the rear towards the more sloping agricultural field to the north.

7. The appeal building is a rectangular timber-clad, shed-like structure at the end of, and filling the width of the garden. It is a little higher than the wooden fencing separating the garden from its neighbours but has a flat roof. It is situated on an area of decking of marginally higher height than the level of the garden. The end of the garden has a boundary with an open agricultural field.

8. The building and the decking have a typical domestic scale and appearance and are clearly situated within the confines of the garden. From the evidence, the dimensions of the building appear to be in the region of 7.3m by 4.5m by 2.5m high with a porch projection of around 3.4m x 1.8m and the decking a modest area in front thereof, elevated marginally from the ground level beneath it.

9. I note that the site is within the Blackdown Hills Area of Outstanding Natural Beauty (AONB), although the appeal site does not contribute in any material way to the reason for the designation. Whilst I note the relationship of the building to an adjoining area of sloping agricultural land which is more befitting of the AONB character, the building does not materially harm it. I noted a similar building in a garden a short distance away from the appeal site which had similar negligible effects on the area's character and appearance.

10. Considered in the round, taking into account the modest scale of the building, its position within a domestic garden and its appearance which is typical of such a structure, I do not consider that it is harmful to the character and appearance of the area. Consequently, the proposal does not conflict with, in particular, Policies DM1 and DM11 of the Mid Devon Local Plan 2013-33 (2020) (Local Plan). These policies collectively seek to ensure that new development is well integrated with surrounding buildings, streets, and landscapes and do not result in over-development of the dwelling curtilage. The proposal would also comply with Local Plan Policy DM27 which seeks to conserve the character, appearance, setting and other special qualities of the protected landscape.

Living conditions of neighbours

11. The appeal garden is separated by wooden fencing from neighbouring gardens on both sides belonging to Nos 18 and 20 respectively. Those gardens are of similar proportions and their levels also rise with increased distance from the rear elevation of the respective dwellings.

12. I was invited to enter into both gardens, in addition to the appeal site, to understand the effects of the proposal on the living conditions of neighbouring occupiers. From No 18 in views similar to that obtained from the kitchen window, the building is around 22 metres away and does not form a significant feature of the view. Whilst I anticipate that the view towards the field at the rear was more open before the existence of a building on the appeal site, I do not consider that the building is overbearing to the neighbouring occupiers at

No 18. Similarly, due to the scale and location of the building in relation to the occupiers of No 20, I do not consider that it forms an overbearing feature that could be held to harmfully affect the living conditions of occupiers thereof.

13. In terms of overlooking, the building and decking are situated in excess of 21 metres from the rear elevation of the appeal dwelling and neighbouring occupiers. This distance is commonly held to be the minimum required to prevent overlooking between facing windows. The existing glazed door is to be changed for an obscure glazed window which would further reduce the number of openings from which views could be obtained towards the general direction of the neighbours.

14. The decking does not provide a platform of such an elevated level relative to the garden that it results in harmful overlooking to the neighbouring occupiers that could not otherwise be achieved with the level differences and existing degree of mutual overlooking. Furthermore, I noted an area of similar decking in the garden of No 20, and though I cannot assume the nature or level of its use, I consider that has the scope to have similar effects on neighbouring occupiers as that forming part of the appeal.

15. For the above reasons, the proposal would not harm the living conditions of neighbours at Nos 18 and 20 Lower Millhayes, with particular regard to privacy or outlook. It would therefore comply with Policy DM11 of the Local Plan which seeks to ensure that extensions and other ancillary development should not have significantly adverse impacts on the living conditions of occupants of neighbouring properties.

Other Matters

16. I note that the proposal involves the provision of water and drainage to facilitate the provision of a bathroom. Notwithstanding that this would involve engineering operations, I consider that this would be of limited consequence visually or in other respects once completed.

17. Whilst I note the concern of neighbours in relation to the creation of a precedent, I do not consider that the building is so different than those already in existence nearby, or its intended ancillary use so unique so as to suggest that it would create a new precedent. Without fettering the interests of any future decision maker, independent occupation of the building would be undesirable as the access would be highly contrived, resulting in occupants of the host dwelling suffering a loss of privacy and adverse impacts from noise and disturbance, were this to occur.

18. It has been suggested that there would be greater demand for off-road parking spaces. However, the provision of modest ancillary family accommodation would not have a material impact on the demand for parking.

19. The correspondence includes reference to the immunity, or otherwise, of the building from enforcement action. As the proposal seeks permission for the building to remain, albeit with alterations, which I find acceptable, the length of time it has stood substantially complete is not a decisive matter in any event.

20. I understand that any use of the building by occupants other than those forming part of the same household within the host dwelling would constitute an unacceptable change of use that could harm the living conditions of neighbouring occupiers. However, the proposal is to allow the building to be used by occupants that are essentially living with the family in the host dwelling and to use it separately of such would necessitate a separate planning application.

Conditions

21. As the development has already started, it is not necessary to impose the condition requiring the statutory time limit for commencement.

22. In the interests of certainty, a condition requiring the completion of development in accordance with the approved plans is necessary.
23. For the reasons already set out, a condition specifying the permitted use of the building is necessary to prevent it from being used independently of the host dwelling.
24. A condition is also necessary to ensure that the proposed bathroom window is provided with obscure glazing prior to its first use as such.

Conclusion

25. The development complies with the development plan. For this reason and taking account of all other matters raised, the appeal is allowed.

Hollie Nicholls
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location Plan, scale 1:1250
Proposed Plan dated 26.05.2021
Proposed Elevations dated 26.05.2021
- 2) The accommodation hereby permitted shall be used solely for purposes ancillary to 19 Lower Millhayes only and shall at no time be used, let, sold or otherwise be disposed of as a separate unit of living accommodation.
- 3) Prior to first use of the WC and shower room hereby permitted, the window in the south elevation shall be provided with obscure glazing and shall thereafter be permanently retained as such.