

Appeal Decision

Site visit made on 2 August 2016

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 August 2016

Appeal Ref: APP/W0340/W/16/3146768
"Jackaways Cottage", White House Green, Sulhampstead, Reading,
RG7 4EB.

- 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 D Taylor against the decision of West Berkshire Council.
 - The application Ref.15/02681/FUL, dated 30 July 2015, was refused by notice dated 25 January 2016.
 - The development proposed is the erection of an outbuilding for the sale of Koi carp and supplies.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an outbuilding for the sale of Koi carp and supplies at Jackaways Cottage, White House Green, Sulhampstead, Reading, in accordance with the terms of the application, Ref. 15/02681/FUL, dated 30 July 2015, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Main Issues

2. The main issues are:
 - The effect of the proposed building on the character and appearance of the surrounding area, including the setting of a listed building; on users of a public footpath; and on the occupiers of nearby dwellings;
 - Whether the proposal constitutes sustainable development given the nature of the site away from sustainable transport modes.

Reasons

Background

3. The appeal site comprises an attached cottage and its extensive garden set in open countryside although there are three other properties adjoining the site and served off a long private driveway. A public footpath crosses part of the garden and runs along the driveway. Jackaways Cottage and the adjoining property are listed buildings - grade II.
4. It is proposed to build a single storey timber building in which there would be ponds for Koi carp together with space for the storage of supplies and a shop/reception. The building would measure about 12m by 6m and have a

pitched roof with a ridge of about 4.5m high. The proposal also includes the formation of a small parking area for 4 cars in the garden.

5. Information submitted in a Transport Statement suggests that the new enterprise would be small in scale and stock Koi imported directly from Japan and collected by the appellant from Heathrow. The Assessment indicates that the building and its use would only generate between 2 or 3 customer visits per day and that the majority of the appellant's business would involve the appellant going to clients' own properties with his advice and design service.

Effect on the character and appearance of the area

6. The site of the proposed outbuilding would be close to a belt of mature trees and shrubs which enclose the south-east boundary of the garden. Consequently, the building would not be prominent in the public realm and in views of open countryside. The building would be seen by users of the public footpath which crosses the site and it would be within the curtilage of the listed buildings and would form part of its setting.
7. However, I consider that the form and design of the outbuilding is modest and attractive. It would have the appearance of a small pavilion and would have a domestic scale. As such, I do not agree with the Council that the building would dominate its surroundings or have a harmful effect on rural views. Its presence would not be visually at odds with its setting in the garden of a listed building and I am satisfied that the proposal would enhance the character and appearance of this sensitive area rather than harm or detract from it.
8. In terms of the activity that could be generated by the proposal again this appears to be small in scale and I do not consider that the 'comings and goings' associated with the use would give rise to harm to the living conditions of the occupiers of the few other houses close-by. The timing of people visiting the site can be controlled by condition so that these visits do not take place at unsocial times.
9. Overall on this issue, I find that the proposal does not conflict with the requirements of policies CS14 and CS19 of the Council's Core Strategy (2012) which seek to ensure that new development is of a high quality design which respects and enhances the character and appearance of the area and also protects the historic environment and landscape character of the area.

Whether sustainable development

10. It is clear that the site lies in the open countryside and the parties agree that the local area is not served by public transport. The Council submit that the location of the site means that the majority of trips associated with the use are likely to be by car and therefore the use for the display and sale of Koi would be more suited to an urban area where a greater range of transport modes would be available.
11. The National Planning Policy Framework (the Framework) encourages sustainable development provided that the social, economic and environmental roles, taken together, are met, as set out in paragraph 7. Within this, the Framework seeks to promote sustainable modes of transport although it recognises that sustainable transport solutions will vary from urban to rural areas. The Framework also recognises the need to support a prosperous rural economy and supports a positive approach to sustainable new development

and the growth and expansion of all types of businesses and enterprise in rural areas including in well designed new buildings.

12. In this case it appears from the evidence submitted that the movement of Koi requires specialist facilities that are unlikely to be suited to public transport and that the development of the business will be likely to involve the use of the car where ever it is located. Further, the evidence indicates that the traffic generation from customers visiting the premises will be very limited in nature. Although the proposal suggests that the employment created would be limited to the appellant himself, this does not weaken the support for it in the Framework and the contribution the enterprise may make to the rural economy.
13. On balance, I find that the location of the site away from public transport modes is outweighed by its low key nature and the support in favour of business and enterprise development.
14. I conclude on this issue that the proposal is generally supported by the Framework and that there is no clear conflict of the proposal with policy CS13 of the Core Strategy which seeks to regulate the traffic impact of development.

Other matters

15. A local resident and engineer raises concerns that the appeal site property has no access to mains water supply or mains drainage and that the building proposed has no toilet or washing facilities. However, while these specialist concerns may arise, there is no clear evidence before me to demonstrate that the supply and disposal of water for the fish ponds cannot be accommodated on the site as far as the planning system is concerned. The movement of fish and the disposal of waste water are likely to be subject to other legislation. Further, although no toilet and washing facility is shown on the 1:100 floor plan, the outbuilding would be sited close to the appellant's home and the facilities here could reasonably provide for such needs. Overall, I am satisfied that the water supply to and disposal from the building can be regulated by conditions in the planning context.
16. A local resident also raises concern that the appellant does not own the access drive and queries whether he has a legal right of access over it for business purposes, however, this is a private matter for the parties involved to resolve.

Planning balance

17. Bringing together my conclusions on the main issues, I have found that the proposed outbuilding is a modest and an attractive building which is of an appropriate scale for the domestic curtilage of this property. Its presence and its use as proposed would not be harmful to the character and appearance of the open countryside; the environs of the footpath which crosses the site; or the living conditions of the occupiers of the other properties that are located off the driveway. I have also found that the design and scale of the outbuilding as proposed would preserve the setting of the listed building and would not be harmful to it.
18. Further, the traffic generation likely to stem from the proposal would not be great and the specialist nature of the use and means of transport involved for the transportation of fish, together with the support for an enterprise in a rural

area, outweighs concerns related to the location of the site in a remote position away from a range of modes of transport.

19. On this basis I have found that the proposal accords with the relevant policies in the development plan that the Council mention in the reasons for refusals. I also consider that the proposal does not conflict with policy CS10 which encourages proposals to diversify the rural economy in service centres and villages, but this policy does not explicitly rule against development in a general countryside location. My attention has also been drawn to West Berkshire Local Plan saved policy ENV.24 but I do not see the proposal as being in conflict with this policy as the criteria set out for approval of residential extensions are similar to the analysis I have undertaken within the main issues.
20. I am satisfied that in the main the proposal accords with the social, economic and environmental roles of sustainable development, when the Framework is read as a whole, and that the presumption in favour of sustainable development should apply.
21. I conclude that the other considerations that arise in this case do not outweigh the general accord with the development plan and national guidance. I will therefore allow the appeal.

Conditions

22. The Council recommends 14 conditions be imposed on any permission and I will consider these under the same numbering. In addition to the statutory condition on the timing of development (1) it is reasonable in the interests of clarity that the plans are specified and the development must be undertaken in accordance with them (2). In order to ensure that the details of the building are appropriate for this site I will impose a condition that only the materials specified in the proposal are used (3). As I have judged that the use is low key and appropriate for this residential curtilage site it is necessary that a condition is imposed to restrict the use to Koi carp sales, and ancillary aspects only, given the close relationship with Jackaways Cottage. Further, it is reasonable and necessary to state in this condition that the use of the building may also include purposes incidental to the residential use of this property but not a separate commercial or residential use (4).
23. In order to ensure that the use and the limited traffic generation involved does not take place at time that would harm the living contortions of neighbours, it is necessary that a condition is imposed specifying the opening times of the operation in the outbuilding (5), however, there is no planning justification to limit the opening period to the season April to September as the Council suggest. Further, given the remote location of the site it is reasonable in the interests of amenity that external lighting on the building is controlled and I will impose a condition requiring the submission of a lighting scheme and that no other external lighting shall be erected on the outbuilding (7).
24. I will also impose the condition relating to the disposal of spoil arising from the development to ensure that this is disposed off in a proper manner in the interests of amenity and to avoid pollution (6). Further, to avoid pollution I will impose the condition recommended in terms of requiring further details of the disposal of waste water from the building (14).

25. In terms of highway aspects, it is reasonable that a condition is imposed requiring the implementation of the parking space shown on the plan before the use commences (10) so as to avoid parking spilling out of the site. Further, it is reasonable that before development commences signs are erected to warn users of the footpath of the presence of construction works (13) to ensure their well being. However, I will not impose condition No. 8 as it is not clear about the extent of works necessary to the driveway outside of the highway and it appeared to me that the existing driveway was suitable for the use anticipated.
26. Finally, as the site lies close to existing mature trees, conditions requiring tree protection works (9) are necessary to ensure that the trees are not harmed by the construction work in the interests of amenity but I do not see that an additional horticultural method statement is needed nor other tree protection in respect of the footpath, therefore I will not impose the recommended conditions 11 and 12.

Conclusion

27. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers 15-1633/101, and 15-1633/100 received on 15th October 2015, and the drawings labelled 'front' and 'Promap' .
- 3) The materials to be used in this development shall be as specified on the plans or the application forms. No other materials shall be used unless prior permission in writing has been obtained from the Local Planning Authority in respect of a planning application.
- 4) The outbuilding hereby approved shall be used as a Koi carp sales and consultancy business only, or for purposes incidental to the residential use of the dwelling currently known as Jackaways Cottage, and shall not be used for any other business or commercial use. The development shall be operated by the occupiers of the Jackaways Cottage only, not be used as a separate commercial or business unit, nor shall the new building hereby approved be sold, let, rented or otherwise separately occupied, or disposed of from the host dwelling, and no separate curtilage shall be created.
- 5) The Koi carp business shall only be open for visitors between the hours of 10:00 to 16:00 Mondays to Saturdays, and the premises shall not be open to the public at any time on Sundays or Bank or other Statutory Holidays.
- 6) No development shall commence on site until full details of how any spoil arising from the development will be used and/or disposed of have been submitted to and approved in writing by the Local Planning Authority in respect of a discharge of condition application. These details shall:
 - a) Show where any spoil to remain on the site will be deposited,
 - b) Show the resultant ground levels for spoil deposited on the site (compared to existing ground levels),
 - c) Include measures to remove the spoil from the site.
 - d) Include a timescale for the spoil removal and associated works.All spoil arising from the development shall be used and/or disposed of in accordance with the approved details.
- 7) No floodlighting or other form of external lighting scheme shall be installed or erected until a scheme of proposed floodlighting specifically designed for the site has been submitted to and approved in writing by the Local Planning Authority via a condition discharge application. Such details shall include location, height, type and direction of light sources and intensity of illumination. Any lighting installed thereafter shall be done so in accordance with the approved scheme. The lighting scheme shall not thereafter be altered without the prior consent in writing of the Local Planning Authority in respect of a planning application other than for routine maintenance that does not change its details.
- 8) No development (including site clearance and any other preparatory works) shall commence on site until a scheme for the protection of

trees to be retained is submitted and approved in writing by the Local Planning Authority via a condition discharge application. Such a scheme shall include a plan showing the location of the protective fencing, and shall specify the type of protective fencing. All such fencing shall be erected prior to any development works taking place and at least 2 working days notice shall be given to the Local Planning Authority that it has been erected. It shall be maintained and retained for the full duration of works or until such time as agreed in writing with the Local Planning Authority via a condition discharge application. No activities or storage of materials whatsoever shall take place within the protected areas without the prior written agreement of the Local Planning Authority by way of a planning application.

- 9) The use shall not commence until the vehicle parking and turning space have been surfaced, marked out and provided in accordance with the approved plans. The parking and turning space shall thereafter be kept available for parking (of private motor cars and light goods vehicles) at all times.
- 10) No development shall commence until details of the signs warning users of Footpath 6/1 have been submitted to and approved in writing by the Local Planning Authority via a condition discharge application. The schemes shall include types of signage, and height and nature of warning. The approved signage shall be displayed for the duration of the construction work.
- 11) No development shall commence until a waste water drainage method statement has been submitted to and permitted in writing by the Local Planning Authority via a discharge of condition application. The development shall be carried out in accordance with the approved details. The method statement shall provide details for;
 - (a) Waste water and trade waste disposal.
 - (b) Details on how the fish tanks will be emptied and disposed.
 - (c) Discharge of fish tank drainage
 - (d) Water leakage measures, and any secondary water tanks.