



Appeal Decision

Site visit made on 26 November 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2019

Appeal Ref: APP/C3620/W/19/3235099

4 Paynes Green Cottages, Weare Street, Ockley RH5 5NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Adrian Haines against the decision of Mole Valley District Council.
 - The application Ref MO/2019/0969/CC, dated 31 May 2019, was refused by notice dated 29 July 2019.
 - The application sought planning permission for the variation of Condition 1 of approved planning application MO/2016/1240 to allow alterations to the fenestration to include the removal of a door on the rear elevation, the addition of a door on the east elevation and relocation of the entrance lobby without complying with a condition attached to planning permission Ref MO/2018/1447/CC, dated 11 October 2018.
 - The condition in dispute is No 2 which states that: "the development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of 4 Paynes Green Cottages".
 - The reason given for the condition is: "to ensure that the development hereby permitted is occupied only for ancillary purposes to the dwelling specified since the site lies within a rural area to which a policy of restraint is applied, in accordance with the advice contained in the National Planning Policy Framework, Mole Valley Local Plan policy ENV3 and policy CS1 of the Mole Valley Core Strategy".
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has questioned whether the creation of a separate address for the appeal dwelling requires planning permission. However, this is not a matter for me to determine in the context of this appeal, in which I am required to assess the effect of the proposal on the issues identified below. Accordingly, I have not considered this matter further.

Main Issues

3. The main issues are the effect that removing the condition would have on:
 - The living conditions of future occupiers of the development and the host dwelling with regard to privacy; and
 - The character and appearance of the area.

Background

4. The outbuilding was converted to ancillary domestic accommodation following a successful appeal¹ in 2016. The removal of Condition 2 is now sought in order to permit the independent occupation of the accommodation.

Reasons

Living conditions

5. The annexe is a single storey building which is in use as ancillary accommodation for a family member. Several windows lie within its rear elevation. Views are possible between the kitchen and living room windows of the annexe and the patio, conservatory and garden of the host dwelling. Some limited screening is provided by intervening garden sheds and landscaping, however this was reduced by seasonal leaf loss at the time of my visit. Whilst oblique, such views are at close proximity due to the position and layout of the dwellings within the site.
6. Some overlooking is additionally possible between hallway windows to the annexe and parts of the host dwelling or its garden, although the potential for this is more limited by intervening structures or landscaping and due to the oblique angles concerned.
7. If the condition were to be removed, the annexe would no longer be ancillary to the main dwelling, and could be occupied by residents with no familial or other connection to the occupiers of the main dwelling. As a result of the aforementioned overlooking, the appeal scheme would result in harm to the living conditions of occupiers of the annexe and of the host dwelling with regard to privacy due to the proximity of the two dwellings. This harm would be moderate as, whilst the annexe windows all lie in relatively close proximity to the host property, the two main windows which give rise to concern (i.e. those which serve the kitchen and living room) lie farthest from the house. Some additional overlooking between the annexe and the conservatory, patio and garden to the host dwelling would occur.
8. A greater level of overlooking between the two properties is currently likely to be acceptable to both parties than if the annexe were independently occupied. This is because independent occupation would allow for the annexe's use by others who would lack a relationship to the occupiers of the host dwelling. The effect of the proposal on privacy is likely to be less acceptable to such occupiers.
9. I acknowledge the appellant's intention for a family member to remain living in the annexe in the event of an allowed appeal. However, this does not overcome the potential of the proposal for the independent occupation of the annexe by others. The proposed removal of the condition would therefore result in materially different circumstances from the current situation.
10. I acknowledge that the closest annexe window to the host dwelling has obscure glazing and hence that overlooking would not be possible between this window and the host. However, this does not overcome the particularly close proximity of the annexe to the host property and the resulting unacceptable effect on the privacy of the occupiers of both dwellings.

¹ APP/C3620/W/15/3130263

11. The availability of private space to the far side of the annexe does not overcome my concerns about the effect of the proposal on living conditions because it does not serve to mitigate the potential for overlooking from and into the annexe's windows.
12. Thus, I consider that the annexe does not easily lend itself to use as an independent dwelling due to its proximity to the host property and the potential for overlooking between the two.
13. Removal of the condition would consequently cause unacceptable harm to the living conditions of future occupiers of the development and the host dwelling with regard to privacy. It therefore conflicts with Policy ENV22 of the Mole Valley Local Plan (2000) ("the LP"), which states that proposed developments should not significantly harm the amenities of the occupiers of neighbouring properties by reason of overlooking, and that they should provide a satisfactory environment for occupiers of the new development.

Character and appearance

14. The annexe is currently in residential use and has a front drive with parking space for two vehicles, fencing and the apparent use of an area of side garden which contains sheds, a washing line and play equipment.
15. The proposed removal of the condition could result in some relatively minor alterations to the appearance of the site such as the use of additional fencing amongst the landscaping to the front. However, the annexe's immediate surroundings already have an established domestic appearance, as set out above. The appeal does not propose alterations to either the dwelling or its associated land. Furthermore, there is nothing before me to suggest that any substantial changes to the site's appearance would be necessary in the event of removal of the disputed condition. Thus, there is minimal indication that the removal of the condition would result in changes so significant as to cause harm to the appearance of the area.
16. The Council draws my attention to two appeal decisions which both considered the issue of the effect of a proposal within the district on the character and appearance of the area. The first² concerned the replacement of an outbuilding used as an art studio with a building to be used as a dwelling. The Inspector concluded that the improved driveway and grounds created a more domestic setting which harmed the appearance of its countryside surroundings.
17. The second appeal decision³ concerned the replacement of outbuildings with a bungalow. The creation of a separate residential curtilage with parking, turning and domestic paraphernalia was found to erode the rural character of the area.
18. Both appeal proposals related to the provision of a new dwelling. Hence, the associated domestic elements which were found to cause harm were new features within their setting. However, I have found above that similar elements are established features of the existing annexe and its surroundings. The current appeal proposal is therefore materially different from the two proposals referred to because any increase in such domestic features would be by so limited a degree as to have no unacceptable effect on the character and appearance of the area, in this case.

² APP/C3620/D/19/3229382 of 24 September 2019

³ APP/C3620/W/19/3232249 of 11 October 2019

19. The 2016 appeal decision at the site found Policy ENV3 of the LP to be out of date due to inconsistency with the National Planning Policy Framework (2012) ("the Framework") as a result of its lack of provision for the re-use of redundant or disused buildings in the countryside. Whilst the Framework has since been revised, a similar provision remains in the latest (2019) revision. Thus, whilst the current appeal scheme does not propose the re-use of such a building, I concur with the submission that Policy ENV3 is out of date for this reason.
20. However, the policy's wider aims provide for the protection of the open character of the countryside. This is broadly consistent with the natural environment aims of the Framework, and therefore I attach some weight to the provisions of Policy ENV3 despite its out of date status.
21. Accordingly, I conclude that removal of the condition would have an acceptable effect on the character and appearance of the area. Thus, the proposal complies with Policy ENV3 of the LP and the natural environment aims of the Framework.

Other Matters

22. As the proposal entails no physical alterations to the annexe, the effect of previous schemes at the site on the character and appearance of the area is a matter which has only minimal relevance to the main issues of the appeal.
23. There is minimal evidence before me to suggest that the availability of housing for younger people in the area is restricted. Thus, the provision of accommodation for a younger family member is a matter to which I attach only minimal weight as a benefit of the proposal.

Conclusion

24. I have found that the proposal would have an acceptable effect on the character and appearance of the area. However, such an absence of harm does not weigh as a benefit of the proposal and would not outweigh the harm I have identified regarding its effect on the living conditions of the occupiers of the appeal and host dwellings with regard to privacy. Thus, for the reasons given above, the disputed condition is necessary and I therefore conclude that the appeal should be dismissed.

C Beeby

INSPECTOR