



Appeal Decision

Site visit made on 11 March 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/D3640/W/19/3240429

Dunstall Cottage, Dunstall Green, Stonehill Road, Chobham, Woking, GU24 8HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs M Williams against the decision of Surrey Heath Borough Council.
 - The application Ref 19/0163, dated 26 February 2019, was refused by notice dated 3 July 2019.
 - The application sought planning permission for conversion of part of existing garage into habitable accommodation with an addition of three dormers to the garage without complying with a condition attached to planning permission Ref 2002/0180, dated 31 May 2002.
 - The condition in dispute is No. 3 which states that: The accommodation in the first floor and part of the ground floor of the garage/stable block hereby approved shall be used solely as ancillary residential accommodation to the parent dwelling known as "Dunstall Cottage" and shall not at any time be separated therefrom for use as an independent self-contained dwelling nor shall it be sold or used as rented accommodation.
 - The reason given for the condition is: To enable the Local Planning Authority to retain control over the occupation of the dwelling and to ensure that the development does not prejudice policies for the preservation of the Green Belt where there is normally a presumption against the provision of new dwellings.
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Decision

1. The appeal is dismissed.

Background

2. Dunstall Cottage is a detached two storey dwelling set back from Stonehill Road with gardens to the rear and north-eastern side. There is an outbuilding close to the front of the house comprising a double garage with a kitchen behind and two bedrooms and a bathroom above. The living accommodation in the outbuilding benefits from dormer windows and a balcony facing across the lawn to the side of Dunstall Cottage, approved in 2002. The proposal to remove a planning condition imposed at the same time would enable the outbuilding to be lawfully used as living accommodation independent from Dunstall Cottage. The appellant's agent has requested permission on a temporary basis for the duration of the tenure of the appellant at Dunstall Cottage to fund the care that the appellant requires and to enable her to stay within her long standing home.

Main Issues

3. The main issues are the effect of the proposal on
 - (a) the integrity of a nearby Special Protection Area (SPA) and
 - (b) on the living conditions of future occupiers of both Dunstall Cottage and the proposed dwelling regarding privacy and amenity space provision for the proposed dwelling.

Reasons

Special Protection Area

4. The site is in a rural area of scattered dwellings surrounded by open fields and woodland. It is within the Green Belt and close to the Thames Basin Heaths Special Protection Area (SPA), a network of heathland sites that provides a habitat for important ground-nesting bird species. Saved Policy NRM6 (Thames Basin Heaths Special Protection Area) of the South East Plan (2009) sets out a 400m "exclusion zone" around the SPA within which mitigation measures are unlikely to be capable of protecting the integrity of the SPA from increased recreational pressures. This is reinforced by Policy CP14 of the Surrey Heath Core Strategy & Development Management Policies (2012) (CS) and the Thames Basins Heaths Avoidance Strategy Supplementary Planning Document (2019) (SPD) which specify that normally no (net) new residential development will be permitted within 400m of the SPA for these reasons.
5. The site is within the 400m "exclusion zone" to the SPA. It is only about 50m from the SPA boundary and therefore is within easy walking distance to it. The proposal would result in an additional dwelling within this zone and would therefore be likely to result in increased recreational pressures that would be harmful to the integrity of the SPA. The proposal would therefore not accord with Policy CP14 and the SPD. I note that the statutory body Natural England have also objected to the proposal on this basis.
6. The appellant argues that there would not be an adverse impact on the SPA as the number of occupants in the outbuilding is unlikely to change as a result of the proposal. It is claimed that the outbuilding has initially been used by family members but for the last 6 years has been rented out separately from the main dwelling in breach of condition 3. Whilst the outbuilding was clearly occupied at the time of my visit, I have not been presented with any evidence to indicate the nature or intensity of past occupation within the outbuilding. Regardless of this, the proposal would formalise the use of the outbuilding as a separate dwelling and its occupiers would generate patterns of activity independent from those of occupiers at Dunstall Cottage. The claimed previous use of the outbuilding does not provide justification for the proposal. I note the Council has invited the appellant to apply for a Lawful Development Certificate in which evidence on the building's previous occupation could be investigated.
7. The appellant has suggested that condition 3 be replaced by a personal condition allowing the outbuilding to be rented out separately only for the period that the appellant resides at Dunstall Cottage. This would help fund a live-in carer so that the appellant could continue to reside in her home. There would be no certainty on the length of time that such a condition would pertain before the outbuilding would revert to ancillary accommodation to Dunstall Cottage.

8. Planning Practice Guidance states that the scope of what can constitute a material consideration is very wide as the courts often do not indicate what cannot be a material consideration; but in general, they have taken the view that planning is concerned with land use in the public interest¹. As such, personal considerations need to be weighed against the public interest. The SPA was designated in 2005, (after imposition of the planning condition the subject of this appeal) and is underpinned by European and national legislation, including the European Community Wild Birds and Habitat Directives. It is my judgement on the evidence available to me that harm to the integrity of the SPA and associated conflict with the directives and with development plan policies arising from increased recreational pressure associated with the use of the outbuilding as an independent dwelling for an unspecified time period would outweigh the appellant's personal considerations.

Living Conditions

9. There are clear glazed first floor bedroom windows and a balcony on the north-western side of the outbuilding that afford oblique overlooking of side windows to Dunstall Cottage. Whilst the angles of overlooking are tight, the proximity of the two buildings means that occupiers of Dunstall Cottage would be vulnerable to overlooking. The level of privacy resulting would be significantly below that commonplace between independent dwellings. As submitted, the plans showed no amenity space provision for independent occupiers of the outbuilding and clear overlooking of the side garden to Dunstall Cottage from the proposed dwelling. These factors weigh against the proposal.
10. The appellant has submitted revised plans with the appeal providing obscured glazing to the first floor windows in the outbuilding's north-western elevation. This would address the overlooking issue without compromising living conditions as there would still be clear glazed windows to both bedrooms in the end elevations. The amended plans also show a fence running close to the flank wall of Dunstall Cottage to separate garden areas for the two dwellings. Whilst the fence would enable provision of sufficient amenity space for both dwellings, it would be a new structure about 35m in length. The reason for imposition of condition 3 related to preservation of the Green Belt. The fence would have some impact on the openness of the Green Belt and character of the area. These were not matters considered at the planning application stage and should reasonably be the subject of public notification. As such, I shall not accept the amended plans in accordance with the 'Wheatcroft' principle but shall determine the appeal on the originally submitted plans.
11. The proposal would not provide satisfactory living conditions for the occupiers of Dunstall Cottage or the outbuilding by reason of overlooking resulting in undue loss of privacy and no dedicated amenity space provision for occupiers of the outbuilding. It would thereby conflict with Policy DM9 of the CS and with the Surrey Heath Residential Design Guide which promote appropriate living condition standards.
12. The appellant points out that the fence proposed in the amended plans could be erected under permitted development allowances. However, it is unlikely that a householder would wish to erect such a fence so close to flank windows at Dunstall Cottage. I do not consider it appropriate to leave details of the siting and form of the fence to approval by a planning condition as the impact

¹ Planning Practice Guidance Paragraph: 008 Reference ID: 21b-008-20140306

on the character of the area and on the openness of the Green Belt need to be addressed. Similarly, it would not be appropriate to limit the erection of the fence to a personal condition linked to the appellant's occupation of Dunstall Cottage, as this would be for an unspecified time period and the impact on the Green Belt and on the character of the area need to be considered in association with this.

Other matters

13. The removal of condition 3 would create a self-contained dwelling in the Green Belt. The appellant argues that as Paragraph 146 (d) of the National Planning Policy Framework enables the re-use of buildings provided that the buildings are of permanent and substantial construction that there would not be any adverse effect on the openness or purposes of the Green Belt. As the Council did not refuse the application on Green Belt grounds and the appeal is to be dismissed in relation to other issues, it has not been necessary for me to reach a conclusion on this point.
14. The appellant has referred to non-planning legislation that supports the wellbeing of individuals and independent living. I have had regard to these references and noted the appellant's personal circumstances as a material consideration, but the primary consideration of the proposal has to be in relation to planning in the public interest.

Conclusion

15. On the basis of the information before me, my conclusion is that the removal of condition 3 would result in harm to the integrity of the SPA and result in unsatisfactory living conditions for future occupiers of both buildings. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed, and the disputed condition retained in its present form.

Rory MacLeod

INSPECTOR