The Planning Inspectorate

Appeal Decision

Site visit made on 20 July 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2020

Appeal Ref: APP/V2255/W/20/3246968
1 Fairview Cottages, Frinsted Road, Milstead ME9 0SB

- 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 without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Boucher against the decision of Swale Borough Council.
- The application Ref 19/504608/FULL, dated 11 September 2019, was refused by notice dated 25 November 2019.
- The application sought planning permission for a proposed two storey rear extension (to replace existing single storey element) to the existing dwelling and erection of an outbuilding for parking and ancillary accommodation without complying with a condition attached to planning permission Ref 16/508465/FULL, dated 6 March 2017.
- The condition in dispute is No 5 which states that: The outbuilding hereby permitted shall be used for purposes ancillary and/or incidental to the main dwelling at all times and it shall not be used as a separate unit of living accommodation.
- The reason given for the condition is: In the interests of residential amenity.

Decision

1. The appeal is dismissed.

Background and Main Issues

2. The outbuilding granted planning permission has been completed. The tenant of 1 Fairview Cottages, who has been resident at that property for over 45 years, has been residing at the accommodation within the outbuilding whilst 1 Fairview Cottages was being extended and refurbished.

3. The planning application form indicates the appellant wishes for the condition to be changed to allow the outbuilding to be independently occupied by the tenant of 1 Fairview Cottages. The application form also seeks to vary the condition to allow what is described as '1 Fairview Cottages Annexe Building' to be occupied by persons employed or last employed in agriculture or by persons ancillary and incidental to the occupiers of 1 Fairview Cottages.

4. I, therefore, consider the main issues to be whether the proposal is an appropriate location for a new independent dwelling, having regard the spatial strategy of the development plan and the National Planning Policy Framework (the Framework) and the effect varying the condition would have on the living conditions of the occupiers of the outbuilding accommodation and the existing adjoining occupiers. If this location is not considered an appropriate location for an independent dwelling would it be necessary and justified to tie

occupation to 1 Fairview Cottages and to a person employed or last employed in agriculture?

Reasons

Location

5. The original planning application sought permission for an outbuilding for parking and ancillary accommodation and not a separate dwelling. Therefore, considerations relating to an independent residential unit were not before the Council. Whilst the Council was previously satisfied that the outbuilding would not detract from the AONB (Area of Outstanding Natural Beauty), removing or varying the planning permission to allow for a person or persons to reside within the ancillary accommodation separate and unrelated to those residents of 1 Fairview Cottages is a materially different planning proposal, despite the structure itself not altering in appearance. The proposal should therefore be considered against the current development plan context, noting that the Council has adopted a new development plan and the Framework has been revised since the outbuilding was permitted.

6. The Swale Borough Local Plan: Bearing Fruits 2031 (July 2017) (the Local Plan) has defined its built-up area boundaries and Policy ST3 seeks to provide new homes in accordance with the settlement hierarchy for the Borough. The appellant contends that Parts 3 and 4 of Policy ST3 relate to the appeal site. However, the appeal site forms part of linear road frontage development to one end of small cluster of development, all of which is surrounded by open countryside. This development within the open countryside would not represent a Rural Service Centre or village to which Parts 3 or 4 could be applied.

7. Part 5 of Policy ST3 states that "*At locations in the open countryside, outside the built up area boundaries, as shown on the Proposals Map, development will not be permitted, unless supported by national policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality or rural communities*". I find that the appeal site better relates to Part 5 of Policy ST3. Given the site's location is in the countryside a new dwelling at the appeal site would not accord with the settlement hierarchy and would not be an appropriate location for residential development.

8. My attention has been drawn to a new dwelling on land between 1 Fairview Cottages and Roslyn that was allowed at appeal[1]. I acknowledge that the Inspector found a new dwelling acceptable. However, that proposal related to a new dwelling sited between two existing dwellings. The considerations relating to the rural landscape will, therefore, be different for an infill development. I do not consider that appeal decision offers support for the proposal before me.

9. For the above reasons, I conclude that the proposed development would not be an appropriate location for a new independent dwelling. The proposal would, therefore, conflict with Policies ST3, DM14 and DM24 of the Local Plan that seeks, amongst other matters, to support the aims of sustainable development,

[1] Appeal Ref: APP/V/W/17/3171593

adhere to the Council's settlement strategy and to conserve and enhance the countryside and valued landscapes, such as, the AONB.

Living conditions and tied occupation

10. The outbuilding is located at the bottom of the garden of the main house, 1 Fairview Cottages, and to the rear of existing road frontage residential development. A garden fence demarks the boundary between 1 Fairview Cottages and the outbuilding. The Council explains that the condition was imposed to prevent mutual loss of privacy. I consider that occupying the accommodation as a independent dwelling would represent an intensification in its use over and above that of ancillary accommodation.

11. I saw that the outbuilding is positioned within a parking courtyard beyond the rear garden of 1 Fairview Cottages. At ground floor the building hosts recessed parking bays. The accommodation comprises an open plan kitchen dining arrangement at ground floor with landing at first floor used as a small television lounge, alongside a bedroom and bathroom. I saw that the ancillary accommodation does not host its own private garden or parking area.

12. The recessed parking is intended to be utilised by the occupiers of 1 Fairview Cottages. Vehicles accessing these parking spaces and manoeuvring within the courtyard would give rise to conflict between different occupiers and users. Furthermore, those adjoining occupiers accessing vehicles and manoeuvring a vehicle in the courtyard would be in extremely close proximity to the accommodation and would be able to observe the internal kitchen dining living space through a window. This would not offer the occupier of the accommodation a reasonable level of privacy and would be harmful to the occupiers' living conditions for this reason.

13. Further to the above, whilst the appellant suggests that the accommodation would have a relatively small amenity space associated with the annexe it does not appear to me that its curtilage has been defined, either on site or within the proposal details. I do not consider the surrounding farmland would provide an equivalent outdoor space to that of a private garden associated with a dwelling. Whilst it is contended that most flats and HMOs would only have very limited outdoor space, the accommodation, being over two-storey with its own front door opening onto the outside world, would be accommodation more akin to a detached dwelling that normally would host associated outdoor living space. The appellant has offered up part of the garden relating to 2 Fairview Cottage as potential outdoor space that could be linked with the accommodation. This potentially would overcome this matter.

14. The new dwelling between 1 Fairview Cottages and Roslyn has been constructed since planning permission was granted for the outbuilding. I saw that from the ground floor kitchen window and the first-floor lounge clear observation was easily achieved of the private rear garden of that neighbouring property. Observation could also be achieved from the first-floor bedroom of the private rear garden of 2 Fairview Cottages. In addition, the occupier of the outbuilding accommodation would utilise the access and courtyard and this would add to the observation of the private rear outdoor living spaces of the adjoining properties.

15. The adjoining gardens are places in which the neighbouring occupiers are likely to spend a reasonable amount of time. This observation would reduce privacy

and diminish the enjoyment of these private outdoor spaces. This would be harmful to the living conditions the adjoining occupiers should reasonably expect to enjoy. It has been suggested that the first-floor window in the northern elevation be frosted using a film. However, this would create a claustrophobic internal living environment and would not be of an acceptable living standard for the occupiers of the accommodation. This, therefore, would not provide an appropriate solution.

16. I have been directed to the Inspector's appeal decision relating to the adjoining site between 1 Fairview Cottages and Roslyn with reference to considerations relating to outlook. Given that proposal related to a development between existing road frontage developments the considerations would be quite different to that of a dwelling adjacent to the rear gardens.

17. The details of the planning application also seek the wording of Condition 5 to be varied to allow occupation of the outbuilding by someone currently or last employed in agriculture or by persons ancillary and incidental to the occupiers of 1 Fairview Cottages. Although the tenant has now semi-retired it is advised that he has been a long-term agricultural worker associated with the appellant's farm.

18. Paragraph 79 of the Framework makes provision for homes in the countryside where there is an essential need for a rural worker. The tenant has been a long-term resident at 1 Fairview Cottages and is a member of the local community. This appears to have been a suitable location for the tenant to live over the many years that he has been employed at the appellant's local farming enterprise. However, it is advised that the tenant can no longer afford the rent of the newly renovated 1 Fairview Cottages and that on-going health issues mean that managing the upkeep of that property would be difficult.

19. I have been directed to the availability of large family homes in the area, however neither party has pointed me to any other accommodation within the locality that might be suitable and affordable to the tenant. I sympathise with the position the tenant has found himself in. Nonetheless, if the accommodation were to be occupied by the tenant, or other persons linked with 1 Fairview Cottages, on a restricted conditional basis, overlooking of the adjoining properties would occur over the time the tenant occupies the annexe. As such, this would be harmful to the living conditions the adjoining occupiers should reasonably expect to enjoy.

20. For the above reasons, I conclude that the occupation of the outbuilding as an independent dwelling, whether or not on a conditionally restricted basis, would be harmful to the living conditions of the occupiers of the outbuilding accommodation and existing adjoining occupiers. The proposal would, therefore, conflict with Policy DM14 of the Local Plan that seeks, amongst other matters, development to cause no significant harm to amenity.

Other matters

21. The Council advises that its Housing Delivery Test indicates that it can demonstrate a 4.6-year supply of housing land at present. The appellant makes much of the Council not having a 5-year supply of housing sites in place. I have been pointed to a development at the 'Spirit of Sittingbourne' that is no longer coming forward and the Government Funding for Local Road Improvements that will potentially influence housing delivery, along with

evidence pertaining to a separate appeal that also suggests slippage in delivery. I note also that the impacts of the recent Covid pandemic could have implications for the house building industry, although in this case it should be recognised that the accommodation has already been built.

22. I acknowledge that small scale sites can assist in bolstering the supply of housing sites. Nonetheless, I do not consider this proposal, being for only one residential unit, would make a real and material difference to the Borough's housing land supply. Furthermore, having regard to the tenant's individual housing circumstances, the shortage of suitable housing does not justify occupation of an annexe that would be harmful to both the living conditions of the occupier and neighbouring occupiers.

23. Notwithstanding the above, whilst 0.4-years is not a significant shortfall, a 5-year supply is not in place. In circumstances where there is a housing land supply shortfall paragraph 11 of the Framework indicates that the most relevant policies for determining the application should not be considered up to date and advises that decisions should apply a presumption in favour of sustainable development. Further to this, paragraph 11 d) i. indicates that planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The appeal site falls within the designated Kent Downs AONB, one of those protected areas identified by footnote 6 of paragraph 11 that exempts the presumption in favour of the development from being applied. Whilst the existing settlement boundaries carry reduced weight due to the housing shortfall, the fact that the appeal site falls within the AONB is a significant factor that weighs against the proposal.

24. The Council has highlighted the requirement for a financial contribution towards habitats and related mitigation. However, given my findings it has not been necessary for me to consider this matter further.

25. I note that Council tax has been paid for the building, however, taxation is separate to that of the planning process and serves a different purpose. This does not offer support for the proposal.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR