
Appeal Decision

Site visit made on 10 August 2020

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 September 2020

Appeal Ref: APP/C1760/W/20/3248944

Kestrels Nest, 1 The Kestrels, Stockbridge Road, Lopcombe SP5 1BS

- 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 and Mrs Jeff Hounslow against the decision of Test Valley Borough Council.
 - The application Ref 19/01876/FULLN, dated 30 July 2019, was refused by notice dated 15 November 2019.
 - The development proposed is use of the annex as an independent dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The annexe known as Kestrels Nest has been occupied by the appellants independently of the main dwelling (1 The Kestrels) since April 2018.

Main Issues

3. The main issues are:
 - a) whether use of the annexe as an independent dwelling would comply with development plan policy on housing in the countryside and, if not, whether there are material considerations to outweigh the policy conflict; and
 - b) the effect of the development on the integrity of the Solent European protected sites.

Reasons

Background

4. Kestrels Nest was originally approved in 2014¹ as a residential annexe for an elderly relative. The detached building is located approximately 55 m to the rear of the main house. The internal accommodation is laid out as a 1-bed unit with its own living room, bathroom and kitchenette/dining area. The appellants contend that for all intents and purposes it was approved as a dwelling due to the degree of self-containment and detachment, and the provision of separate parking. However, the building retains the character of an annexe by virtue of the fact that it shares a common access and is subservient to the parent

¹ Ref 14/01776/FULLN

property in terms of scale, appearance and the level of accommodation provided. Applying the principles of *Uttlesford DC v SSE & White* [1992], there is no reason why it cannot function as ancillary accommodation within the same planning unit.

Development plan policy

5. The starting point for any assessment is section 38(6) of the Planning and Compulsory Purchase Act 2004. This requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan for the purposes of this appeal comprises the Test Valley Borough Revised Local Plan 2011-2029 (TVBRLP).
6. The site lies in the countryside in policy terms, outside the boundaries of settlements in the hierarchy. TVBRLP Policy COM2 states that development in such locations will only be permitted if it is appropriate in the countryside as set out in specific policies, or if it is essential for the proposal to be located in the countryside. The supporting text explains that development away from the defined settlements is unlikely to meet all the elements of sustainable development particularly the access to a range of facilities. Any proposals would need to demonstrate that the overall social and economic benefits outweigh the disadvantages of a location which is relatively remote from facilities.
7. TVBRLP Policy LE16 relates to the re-use of buildings in the countryside and sets out the criteria to be applied to such proposals. It is common ground that the development complies with criteria (a) to (d); the annexe is structurally sound and suitable for occupation as an independent dwelling without any external manifestations of the change of use. The remaining policy criteria relate specifically to residential uses, such uses being acceptable only where the proposal is for occupational accommodation for rural workers, or where it is demonstrated that every reasonable attempt has been made to secure commercial use (including tourist accommodation).
8. Starting with the first of these criteria, Mr Hounslow is employed as a river keeper. Living at Kestrels Nest will undoubtedly make it more convenient to travel to work. However, there is no evidence before me to show that it is essential for him to live at the appeal site to undertake the role. Furthermore, I have no information to demonstrate compliance with the detailed requirements of TVBRLP Policy COM10 in respect of occupational accommodation for rural workers in the countryside.
9. Turning now to the second criterion, I have seen nothing to indicate that the annexe has been marketed for alternative uses. Based on what I saw at the site visit, the building would be eminently suitable as tourist accommodation. Whilst I appreciate the appellants' personal circumstances, the failure to investigate commercial uses leads to a conflict with the development plan.
10. To conclude, taking the local plan as a whole, there is a clear conflict with TVBRLP Policies COM2, COM10 and LE16.

European protected sites

11. The site lies within the zone of influence of several European sites which are based around protected habitats and bird species on the Solent. The principal concern is that nutrient inputs in wastewater from the development would contribute to eutrophication which would harm the conservation status of the protected sites. Advice from Natural England is that, pending the outcome of

detailed work on the subject, development should achieve 'nutrient neutrality' in order to address the current uncertainties on whether new growth will further deteriorate designated sites.

12. The Council's position rests on the assumption that the proposal would lead to a net addition of one dwelling to the housing stock. It challenges the appellants' nitrate budget on this basis. However, whether the accommodation is occupied independently as a 1-bedroom dwelling, or is occupied as a 1-bedroom annexe, there will be no increase in nitrates finding their way into the Test. Whilst it is important to apply a precautionary approach, I am nevertheless satisfied that there is no conflict with the Habitats Regulations or TVBRLP Policies E5 and E8. The latter policies seek to conserve biodiversity and avoid pollution which would cause unacceptable risks to the natural environment.

Other material considerations

13. The appellants' personal circumstances are the most significant of the material considerations being put forward to outweigh any policy conflict. As set out within the background documentation, Mrs Hounslow suffers from a number of medical conditions which mean that 1 The Kestrels is no longer suitable for her everyday needs. The residential annexe provides single level accommodation which is more practical. Furthermore, the location of the building to the rear of the site provides a quieter environment away from traffic noise which aids sleep. The Council does not dispute that the annexe is better suited to the appellants' needs in comparison to the parent dwelling.
14. It is argued that occupation of the annexe as an independent dwelling accords with local plan objectives to deliver 'lifetime homes' and housing for people with disabilities. Even if Kestrels Nest did meet the relevant technical standards – and I have seen no evidence on that particular point – there is no mechanism being put forward to guarantee that it would be occupied as specialist housing in perpetuity. Furthermore, it seems to me that the benefits of specialist housing would be greatest where such homes are located within existing communities. Notwithstanding the presence of other buildings in the immediate locality, the site is remote from existing settlements and requires travel by private car to access key services such as shops, healthcare and libraries. The nearest settlement of any size is Stockbridge approximately 9 km away.
15. Use of Kestrels Nest as an annexe could theoretically generate its own trips by private vehicle. However, there is the opportunity for trip linking with members of the same household living in the parent property. An independent dwelling would generate its own comings and goings and the probability is that there would be a net gain in vehicle movements and the distance travelled by private car. This would be contrary to the environmental objective of sustainable development and the underlying aims of the local plan spatial strategy.
16. I accept that the appellants may find a house move stressful. However, I am not persuaded that it would be an impossibility. No details have been presented to demonstrate that other suitable accommodation in the area has been investigated and seriously considered. This weighs against the appellants' case.
17. I have given limited weight to the argument that dismissal of this appeal would lead to a redundant building. It may remain unused should the appellants return to living in the main dwelling. However, given the nature of Mrs Hounslow's needs the likelihood is that the appellants would seek different

accommodation in any event. In those circumstances, there is no compelling evidence to convince me that 1 The Kestrels and Kestrels Nest would not sell on the open market as a single planning unit.

18. The appellants have drawn my attention to paragraph 79 of the National Planning Policy Framework (the Framework) which states that isolated homes in the countryside should be avoided unless specific circumstances apply. Although it is contended that criteria (a) and (c) are applicable, I do not accept that there is an essential need for a rural worker to live at or near their place of work, or that re-use of the annexe as a dwelling would enhance the building's immediate setting. The latter is a prerequisite for the redundant building exception to apply.
19. Criterion (d) would permit an isolated home in the countryside where the proposal would involve the subdivision of an existing residential dwelling. However, I interpret this narrowly to mean the subdivision of one physical residential building (the dwelling). The subdivision of residential units by allowing separate buildings to become separate dwellings, as in the case of the appeal scheme, goes beyond the limited exception set out in the Framework. Therefore, in my opinion, none of the paragraph 79 exceptions apply in this particular appeal scenario.

Planning Balance and Conclusion

20. I have concluded that there would be no harm to European protected sites. However, the proposal would lead to the creation of an additional dwelling in the countryside in a location which is poorly related to services and facilities. It would conflict with the spatial strategy of the local plan and its policies relating to development in the countryside.
21. The appellant contends that, since there are no relevant policies to fit the circumstances of the case, the presumption in favour of sustainable development within paragraph 11 of the Framework should apply. I find no rationale for this argument; the development plan contains clear and up-to-date policies relating to development outside settlement boundaries and the conversion of buildings in the countryside. Consequently, the tilted balance should not apply.
22. The Framework makes clear that the planning system should be genuinely planned and accordingly I have attached the conflict with the development plan significant weight. Although I have sympathy with the appellants position, on balance I do not consider that their personal circumstances outweigh the policy conflict. In reaching this conclusion I have given great weight to the fact that the dwelling would exist on the site long after the appellants' tenure.
23. Finally, I have considered the rights of the appellants under Article 8 of the European Convention on Human Rights. Article 8 affords the right to respect for private and family life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. Dismissing the appeal would interfere with the appellants' rights under Article 8, since the consequence would be that they would need to move out of the annexe back into the main dwelling or find suitable alternative accommodation elsewhere. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the promotion of a sustainable pattern of development which minimises the use of the private car. Given the circumstances overall, I find that a dismissal of the appeal would be justified and in the public interest.

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR