



Appeal Decision

Site visit made on 5 October 2020

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 23 October 2020

Appeal Ref: APP/L1765/W/20/3255795

Brown Eaves, 170 Main Road, Colden Common SO21 1TJ

- 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 Jane Ratcliffe against the decision of Winchester City Council.
 - The application Ref 20/00855/FUL, dated 28 April 2020, was refused by notice dated 24 June 2020.
 - The application sought planning permission for 'retention of existing outbuilding in incidental use to the main dwellinghouse following internal and external alterations' without complying with a condition attached to planning permission Ref 19/01049/HOU, dated 15 August 2019.
 - The condition in dispute is No 1 which states that: *'The building shall be used solely for purposes incidental to the occupation and enjoyment of the existing property as a dwelling (known as: Brown Eaves, 170 Main Road, Colden Common, SO21 1TJ) and shall not be occupied as an independent unit of residential accommodation or for any business uses other than by the occupants of Brown Eaves'.*
 - The reason given for the condition is: *'The use of this accommodation as an independent unit would be contrary to Policy MTRA4'.*
-

Decision

1. The appeal is allowed and planning permission is granted for retention of existing outbuilding in incidental use to the main dwellinghouse following internal and external alterations at Brown Eaves, 170 Main Road, Colden Common SO21 1TJ in accordance with the application Ref 20/00855/FUL, dated 28 April 2020, without compliance with condition number 1 previously imposed on planning permission Ref 19/01049/HOU, dated 15 August 2019 and subject to the following conditions:
 - 1) The building shall be used solely for purposes ancillary to the occupation and enjoyment of the existing property as a dwelling (known as: Brown Eaves, 170 Main Road, Colden Common SO21 1TJ) and shall not be occupied as an independent unit of residential accommodation or for any business uses other than by the occupants of Brown Eaves.
 - 2) The development shall be maintained in its current form, as shown in plan ref: 070519 1A3 and at no time shall additional doors, windows, internal sub-divisions or domestic facilities be introduced, without the prior consent of the local planning authority.

Application for costs

2. An application for costs was made by Jane Ratcliffe against Winchester City Council. This application is the subject of a separate Decision.

Procedural Matter

3. At the appeal stage the appellant submitted a planning obligation by way of a Unilateral Undertaking, dated 27 July 2020, pursuant to section 106 of the Town and Country Planning Act 1990. It would require that the outbuilding is not to be used at any time other than for purposes ancillary to the residential use of the main dwelling. I shall return to this matter later.

Background

4. Planning permission¹ was granted in 2019 for 'retention of existing outbuilding in incidental use to the main dwellinghouse following internal and external alterations'. The permission was subject to two planning conditions.
5. The application, the subject of this appeal, seeks to vary condition 1 of the planning permission as set out in the above banner heading so that the building shall be used solely for purposes ancillary to the occupation of the main residential property and shall not be occupied as an independent unit of residential accommodation. The application does not seek to vary, or remove, condition 2 of the planning permission.
6. The Council is concerned that the proposed variation of the condition would result in accommodation that would be occupied separately from Brown Eaves and so, in effect, amount to the creation of a new dwelling in the countryside.

Main Issue

7. In light of the above, the main issue is whether the proposed variation of condition 1 would result in the creation of a new dwelling in the countryside.

Reasons

8. The appeal site is located in the countryside, where Policy MTRA4 of the LPP1 limits the development of new dwellings to affordable housing (to meet demonstrable local housing needs) and to those required in connection with agricultural and related rural enterprises.
9. The appeal building is a single storey detached outbuilding located towards the rear (western) boundary of the site, approximately 28 metres away from the main house (Brown Eaves). It comprises one entrance door and windows that serve three rooms. The rooms contain various items including gym, sports and other games equipment and areas set aside for chairs, sofas, a bed and general storage. It also has a WC and a hand basin.
10. The 2019 approved planning permission already allows the outbuilding to be used for purposes incidental to the occupation and enjoyment of Brown Eaves. It is therefore necessary for me to assess whether the accommodation, based on the evidence before me and what I saw at the time of my site visit, would likely be ancillary to Brown Eaves and so would, in reality, not be used as an

¹ Reference: 19/01049/HOU

independent/separate dwelling which would give rise to concerns of principle in regard to Policy MTRA4 of the LPP1.

11. Ancillary uses are not distinguished by scale, although that may be relevant in some cases. Notwithstanding the size, scale and floor area of the outbuilding, compared to the main house, it is a smaller building. The essential feature of ancillary use is that there should be some functional relationship between the ancillary use and the primary use. Moreover, that functional relationship should be one that is normally found.
12. The appellant states that it is her intention to provide care for a vulnerable elderly relative, with meals either taken in the main house or the outbuilding. I note that the outbuilding does not have a kitchen. Hence, the compelling evidence before me indicates that the occupant of the ancillary accommodation would live as part of the household of Brown Eaves. This amounts to substantive evidence that the use of the outbuilding would be ancillary to the main dwelling.
13. As a result of the layout of development there is only a narrow passage between the north elevation of Brown Eaves and the boundary fence. Thus, there is no vehicular access to the outbuilding from the road. Consequently, access for drivers and pedestrians to the outbuilding would be shared with the main house. There is no subdivision of the appeal site; the outbuilding does not have its own curtilage and there is only one garden area. Notwithstanding the separation distance there is a path that connects the outbuilding to the main house and with no physical structure present there is nothing to prevent free movement around and between them.
14. I acknowledge that the outbuilding, with brick external walls and a tiled roof, has the appearance of a bungalow. However, taking into account all the above factors its use would be part and parcel of the primary dwellinghouse use because it would be functionally connected to it.
15. Consequently, the use of the accommodation would be ancillary to Brown Eaves and so, as a result of the proposal, a new dwelling would not be created in the countryside. In this regard, therefore, the proposal would not be contrary to Policy MTRA4 of the LPP1, which seeks to limit the development of new dwellings in the countryside to affordable housing and to those required in connection with agricultural and related rural enterprises.

Other Matters

16. In regard to the submitted planning obligation, paragraph 54 of the National Planning Policy Framework states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. I am satisfied that the imposition of a planning condition would ensure that the existing outbuilding is used solely for purposes ancillary to the occupation and enjoyment of the main dwelling (Brown Eaves) and shall not be occupied as an independent unit of residential accommodation. Thus, I do not consider, in this case, that the submitted planning obligation is necessary.
17. Interested parties have raised concerns about noise and disturbance from people moving between the main house and the outbuilding and noise and additional traffic going in and out of the access to the site off a busy main road. However, this may arise irrespective of whether the outbuilding is used for

purposes incidental to the use of the main house or ancillary to it. In any event, it is unlikely that any additional movements of people and manoeuvring of vehicles associated with the proposal would give rise to a serious adverse effect by way of noise and disturbance to neighbours by comparison with the existing situation such as to make the proposal unacceptable on this ground.

18. Interested parties have also raised concern that the outbuilding could be sub-let as an independent dwelling. However, the imposition of condition 1 would restrict the use of the outbuilding solely for purposes ancillary to the occupation and enjoyment of the main house and prevent its occupation as an independent unit of residential accommodation. I see no good reason why full compliance with condition 1 could not be enforced.
19. Concern is raised by interested parties that the proposal would set a precedent. However, allowing the appeal would not set a precedent because each proposal must be determined on its individual merits. A general concern of this nature does not justify withholding permission in this case.
20. I have taken into account all other matters raised but these do not change my conclusion that the appeal should be allowed.

Conditions

21. The wording of condition 1 set out above is based on that suggested by the Council. The appellant was given the opportunity to comment.
22. The guidance in the Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) should also restate the conditions imposed on earlier permissions that continue to have effect. Regarding condition 2 of the earlier planning permission the Council has suggested additional wording to include '*without the prior consent of the local planning authority*'. The suggested additional wording does not have a material effect on the overall intention of planning condition 2 and so I have included it.

Conclusion

23. For the reasons given above the variation of condition 1 would be acceptable and the proposal would not be contrary to the development plan. Accordingly, having regard to all other matters raised, the appeal is therefore allowed. In accordance with section 73(2)(a) of the Act I have granted a new planning permission without the disputed condition but substituting it for a new one referring to the ancillary use of the building.

Andrew Bremford

INSPECTOR