



Appeal Decision

Site visit made on 16 November 2021

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/U1430/W/21/3274328

Reeves Cottage, Kane Hythe Road, Netherfield TN33 9QU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss D Griffin against Rother District Council.
 - The application Ref RR/2020/1668/P is dated 11 September 2020.
 - The development proposed is the change of use of ancillary living unit to self-contained dwelling and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ancillary living unit to self-contained dwelling and associated works at Reeves Cottage, Kane Hythe Road, Netherfield TN33 9QU in accordance with the terms of the application, Ref RR/2020/1668/P, dated 11 September 2020, subject to conditions in the attached schedule.

Preliminary Matters

2. The submitted drawings show the removal of part of the Reeves Cottage driveway within the site edged red, in order to create a new curtilage for the proposed dwelling. This work appears to have been undertaken and would be likely to have been an act of development. Both the main parties have commented on the access arrangements. Therefore, I do not consider that it would prejudice either main party by my amending the description of development to take account of these associated works within the site edged red by my adding the words 'and associated works' to the description of development. The revised access to Reeves Cottage is, however outside of the appeal site and so is a separate matter for the Council to consider.
3. There is also a suggestion by the Council that the previous replacement of two of the annexe's garage doors with windows might be unauthorised. However, there is no indication of any ongoing enforcement action in that respect. I have therefore considered those windows as part of the scheme before me and altered the description of development in paragraph 1 of this decision accordingly.
4. A revised Framework¹ was published between the submission of the planning application and the appeal coming before me. I am satisfied that this latest version of the Framework does not raise any new considerations in relation to this appeal.

¹ National Planning Policy Framework (2021)

5. The appeal is against the failure of the Council to arrive at a decision within the relevant statutory period. Nevertheless, at appeal the Council has clarified that, had it been in a position to do so, it would have refused planning permission for several reasons. I have approached the appeal in that context.

Main Issues

6. The main issues are a) whether or not the appeal site is an acceptable location for the development proposed with specific regard to access to facilities and services; and b) the effect of the proposed development on the character and appearance of the area with specific regard to the Area of Outstanding Natural Beauty (AONB).

Reasons

Principle of Development

7. In the interests of encouraging sustainable patterns of new development and access to facilities and services the Core Strategy², the Local Plan³ and the Neighbourhood Plan⁴ all generally seek to avoid development, including new dwellings, in the open countryside (instead directing it principally to defined settlements). This approach is broadly reflective of the Framework. Policy RA2 of the Local Plan does set out certain justified exceptions, for example, development related to agricultural or tourism needs. The appeal scheme would not, however, comply with any of the expressed exceptions.
8. The appeal site is in the open countryside, outside of a defined settlement. There is some disagreement between the main parties as to the exact distance between the site and the town of Battle, to the south east. Netherfield, which the Council consider offers a more limited range of facilities and services, appears to be a slightly shorter distance to the north west of the appeal site. However, travelling to either of these centres from the appeal site would be likely to involve a car journey.
9. There is no evidence before me to suggest that the site is currently served by public transport or, if it is on a bus route, that residents of the appeal site could easily reach a bus stop. Whilst I accept that the distances involved would, in theory, be walkable or cyclable, these routes would not be attractive to many people given the absence of dedicated footpaths. A lack of street lighting would make such options particularly unattractive during the winter months. If a resident at the appeal site needed to access local facilities and services, the most likely mode of transport would, it seems to me, be by car. This is the least sustainable travel option.
10. However, the annexe is already occupied. This occupation is agreed by the main parties to be within the remit of the existing planning permission and has the potential to generate a number of daily car journeys. An unfettered occupation could reasonably be expected to result in a slight increase in the overall number of vehicle movements from the site, if for no other reason than any co-dependent journeys with the occupants of Reeves Cottage would cease. Any harm arising by virtue of additional vehicular movements is therefore likely to be limited.

² Rother District Council Rother Local Plan Core Strategy

³ Rother District Council Development and Site Allocations Local Plan

⁴ Battle Civil Parish Neighbourhood Plan 2019-2028

11. Nevertheless, having regard to all of the above, I find that the existing annexe is not in an acceptable location in terms of accessibility to local facilities and services. As a result, the proposal conflicts with Policies OSS2, OSS3, RA2 and RA3 of the Core Strategy, Policy DIM2 of the Local Plan and Policy HD1 of the Neighbourhood Plan, which amongst other things, seek to limit development in the open countryside and thus minimise less sustainable forms of travel when accessing local facilities and services.

Character and Appearance

12. The annexe has a brick and render finish with tiled roof and hipped gable ends. Windows in the gables and rooflights on the roof slope serve the building's first floor accommodation. The annexe, the host property and the small adjacent field parcels within the appellant's ownership, are enclosed by the B2096 on one side and encircled by trees on the others.
13. Although the land within the appellant's landholding falls away to the east, the upper parts of both buildings can still be seen from the B2096, against the backdrop of the woods, when travelling north. Indeed, given the width of the appeal building, the size and design of its roof, together with its distance from Reeves Cottage (said to be 35m by the Council), and notwithstanding the changes already made to it, the annexe does not obviously present as an ancillary building when viewed from the B2096. Accordingly, its conversion to a dwelling would not inherently result in significant change.
14. The buildings, when they can be seen, present as small components that do not unduly disrupt natural views. Therefore, the appeal site is broadly reflective of the wider area insofar as the wider area also comprises undulating fields, enclosed by tree belts and dense woodland. Indeed, the woodland to the rear of the buildings is Ancient Woodland, which is a key characteristic of the AONB.
15. Policies DEN1 and DEN2 of the Local Plan and Policy EN1 of the Core Strategy seek to protect the natural and landscape character of the area and limit development in the AONB. This approach reflects Paragraph 176 of the Framework, which advises that great weight should be given to conserving and enhancing the landscape and scenic beauty of such areas.⁵
16. In addition to the removal of the access through to the host property, there would be a more formalised curtilage and the potential for additional domestic paraphernalia, given there would be no interdependency between the two properties. Some enclosure of the land around the annexe has already taken place, with wooden post and rail fencing. However, the limited size of the curtilage and it being on lower lying land ensure it is contained and not open to wider views. The erection of less sympathetic means of enclosure could be controlled by condition.
17. I also saw that the relationship between the building and woodland already exists, the land is already used as garden area and thus cannot comply with the standing advice from Natural England and the Forestry Commission in terms of protection of Ancient Woodland. Whilst the occupants of the annexe would currently have access to the garden of Reeves Cottage, the on-site arrangements suggest that activities are concentrated around the annexe, without undue harm to the woodland.

⁵ Noting the duty placed upon me to have regard to the purposes of Areas of Outstanding Natural Beauty under Section 85(1) of the Countryside and Rights of Way Act 2000.

18. Indeed, the layout of the appeal site and that of the annexe building suggest that the area of land between the building and woodland would have limited appeal, with the proposed curtilage to the side of the annexe and away from the woodland, being far more attractive for more intensive domestic activity. The proposal does not involve extending the annexe building closer to the woodland, which could put pressure on it, and thus there is little evidence to suggest that in this particular instance, the woodland would be harmed by the appeal being allowed.
19. The formalisation of two curtilages could result in demand for additional curtilage buildings. However, subject to the terms of the Permitted Development Order⁶, the appellant is currently able to erect an outbuilding to serve Reeves Cottage, if required. However, a condition requiring the Council's approval of any additional curtilage buildings within the appeal site would be appropriate given the site's setting.
20. Whilst the proposal would have some effect on the site's appearance, these changes would be relatively minor and localised. The overall scale and massing of built form and its wider visibility would remain unchanged. I do not therefore consider that the proposal would harm the character and appearance of the wider area or that of the AONB.
21. Accordingly, I find that the proposal would accord with Policies DEN1 and DEN2 of the Local Plan and Policy EN1 of the Core Strategy, which amongst other things, seek to ensure development does not harm the natural and landscape character of the area, including the scenic beauty of the AONB.

Other Matters

22. The appeal building is positioned between Reeves Cottage and the existing equestrian building/stables. Given the distance to Reeves Cottage there would be no particular loss of privacy to either set of occupants. If additional screening/enclosure were desired along the shared boundary this could be achieved with a hedge or similar planting and would not necessarily result in something which would be out of keeping with this rural setting. As I have already noted, new means of enclosure could be controlled by a suitably worded condition.
23. The equestrian building/stables are set away from, and at a lower level than, the annexe. The two buildings are also separated by a grassed bank and trees. Whilst occupants would have sight of the equestrian building/stables, it would not dominate the outlook or be unduly prominent. The openings to the equestrian building/stables are positioned on the opposite side to the appeal property. There is no substantive evidence to suggest that if the annexe building were occupied by someone unconnected with the equestrian building/stables there would be particular harm caused to their living conditions or that such occupation would prejudice the use of the equestrian building/stables.
24. The curtilage for the appeal building was initially larger than now proposed but on the advice of the Council was reduced in size. The Council opposes the scheme because of the small curtilage being contrary to Policy OSS4 of the Core Strategy and DHG7 of the Local Plan. This latter policy requires a

⁶ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

minimum garden length of 10m. I have not been provided with any further information, but this size of garden would normally prevent such harms as overlooking, buildings harming outlook or becoming dominant or overshadowing neighbours. It would also ensure a reasonable amount of garden area for the dwelling's occupants. Given the absence of close neighbours, many of these concerns would not apply to the appeal site. The proposed curtilage although irregular in shape, would provide sufficient areas to enable the normal domestic activities to be undertaken for the occupants of a two bedroom dwelling.

25. Both the main parties made comments with regard to Paragraph 80(d) of the Framework. However, the provisions of that paragraph specifically refer to the subdivision of an existing residential building and not the conversion of an existing ancillary building or the subdivision of a curtilage.

Planning Balance

26. Although the main parties have presented different figures, it is clear that there is less than three years housing supply available in the district. Accordingly, I must have regard to paragraph 11 of the Framework. As I have not found harm in relation to the AONB, Paragraph 11(d)(i) would not be applicable. I therefore turn to considering whether or not the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
27. The appeal site is not well located in terms of its accessibility to local facilities and services and will necessitate the use of a vehicle. However, as I have indicated above, the impact would be limited compared to existing circumstances.
28. The appeal building is already in a residential use (albeit ancillary to the main dwelling) and there would be minimal alterations to the building or wider site. As such, there would be only localised effects on site but not to the wider area. I have not found harm in relation to the character and appearance of the area with specific regard to the AONB. Accordingly, this matter is neutral in any balance.
29. The Council indicates that it is striving to meet its housing targets by granting planning permissions in sustainable locations. However, it is clear from the information submitted by the main parties that it is likely to be some considerable time before the Council might be in a position to significantly address the shortfall. The Government's objective is to significantly boost the supply of housing and the proposal would provide a single, independent dwelling. The proposal would also accord with the Framework's support for windfall sites. The proposal would make a small contribution towards these objectives and the district's housing targets, which I accord moderate weight in light of the shortfall here.
30. When assessed against the policies in the Framework taken as a whole, the limited harm that would result does not significantly and demonstrably outweigh the benefits (and the site's effect on the AONB does not provide a clear reason for refusal). Thus, other material considerations in this specific instance justify allowing the appeal.

Conditions

31. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans, which is necessary in the interests of certainty.
32. As I previously noted, given the site's location it would be reasonable to restrict the means of enclosure in order to protect the character and appearance of the area. Similarly, having given weight to the building's existing appearance, its current relationship with the Ancient Woodland and the limited effect the permission would have on the wider area, including the AONB, it is reasonable and necessary to ensure that matters such as additions to the building, the provision of outbuildings, areas of hard surfacing and means of enclosure are controlled. Accordingly, a condition removing such permitted development rights is imposed.

Conclusion

33. In this instance, the proposed development would not accord with the development plan taken as a whole, but there are other considerations that outweigh this finding. I therefore conclude that the appeal should be allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location Block Plan – 6639/LBP/B
Existing Layout – 6639/EX
- 3) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, E and F and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by those Classes, other than that expressly authorised by this permission, shall be carried out to, or within the curtilage of, the dwellinghouse hereby permitted.