



Appeal Decision

Site visit made on 10th August 2022

by Megan Thomas Q.C. Barrister-at-Law

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 5th September 2022

Appeal Ref: APP/U1430/D/22/3299008

44 Marley Road, Rye, East Sussex TN31 7BD

- 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 Mrs Layla Twine against the decision of Rother District Council.
 - The application Ref. RR/2021/75/P, dated 21 May 2021, was refused by notice dated 1 March 2022.
 - The development is a wooden cabin to the side of the property to be used for sleeping accommodation.
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Decision

1. The appeal is allowed, and planning permission is granted for a wooden cabin to the side of the property to be used for sleeping accommodation at 44 Marley Road, Rye, East Sussex TN31 7BD in accordance with the terms of the application, Ref RR/2021/75/P, dated 21 May 2021, and the plans numbered 21/217/01, 21/217/02, 21/217/03 and an undated Site Layout Plan.

Procedural Matter

2. The development which is the subject of the appeal has already taken place nevertheless I have assessed it on its planning merits irrespective of it having already taken place.

Main Issues

3. The main issues in the appeal are whether the development provides appropriate living conditions for future occupants in terms of facilities, the effect of the proposal on the character and appearance of the area having particular regard to local policy and the effect of the proposal on flood risk.

Reasons

Living conditions for future occupants

4. The appeal site is a semi-detached dwelling with a front, side and rear garden and it is situated on Marley Road at its junction with Mason Road. It has off-road parking at the front next to the front garden. It is within a residential area which includes similar dwellings and is within the defined settlement envelope of Rye. It faces north west and is within a flood zone.

5. The building for which permission is sought is situated in the side garden of the dwelling behind a close-boarded fence and gate which separate the front garden from the side and rear garden area. The rectangular timber building is about 5.3m wide, about 3.3m deep and has a flattish roof at a height of about 2.65m. It has a patio door and a window to the front and a high-level window to the rear which faces Marley Road. It is insulated and heated. It is in use as sleeping accommodation incidental to the use of the main residential dwelling.
6. An annex or outbuilding within the curtilage of a main residential dwelling can generally be used as sleeping accommodation ancillary to the use of the main dwelling. In this case, the cabin does not have a WC or a bathroom. However, this does not render it unacceptable in planning terms or in real terms for an 'occupant' who is using it as sleeping accommodation. Occupants of the appeal site in fact occupy the whole of the planning unit which in this case includes the main house and the cabin. The cabin is sleeping accommodation incidental to the enjoyment of the main dwellinghouse.
7. The cabin is not a separate and independent residence and does not need to be equipped with facilities necessary to support day-to-day living needs. In this case, WC and bathroom facilities are a couple of steps away in the main house via a door which is situated on the south-eastern flank wall of no.44. That is an adequate arrangement for this cabin at this site.
8. On this issue, I conclude that the development provides acceptable living conditions for occupants of the appeal site. There is no breach of policy OSS 4 of the Rother Local Plan Core Strategy (adopted 2014).

Character and appearance

9. The upper part of the building is visible from the streetscene above the fence line. However, the visible part is not extensive or eye-catching. In appearance it does not differ greatly from a contemporary flat-roofed garden shed that might typically be glimpsed in rear gardens in similar residential areas. The cabin does not sit forward of the front building line of no.44. It does not appear dominant, alien or incongruous in the streetscene.
10. Policy DHG10 of the Rother Development and Site Allocations Local Plan states that the creation of an annex will be considered in accordance with a sequential approach starting with whether an extension to the main dwelling might achieve the annex, then whether an existing building in the curtilage might be converted to be an annex. Finally what is envisaged is a new building in the curtilage in close proximity to the main dwelling which shares services with it. From the evidence available to me it is clear that the appellant meets that sequential approach because a) the landlord would not allow an extension, and, b) there is no suitable existing curtilage building that could be converted to use as an annex; as a result the development would be in close proximity to and share facilities with the host dwelling.
11. On this second issue, I conclude that the proposal does not harm the character or appearance of the streetscene and the proposal does not conflict with policy DHG10 of the Development and Site Allocations Local Plan (adopted 2019) or policy OSS4(iii) of the Rother Core Strategy (adopted 2014).

Flood risk

12. The cabin is providing sleeping accommodation and it is ground floor accommodation. It is in Flood Zone 3 which is land which has a high probability of flooding, in this case from surface water. The cabin for sleeping is classed in Planning Practice Guidance as a "more vulnerable development". The Environment Agency has objected to the development.
13. The NPPF advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. Policy EN7 in the Core Strategy is permissive of development in an area identified as a flood risk if it submits a site-specific Flood Risk Assessment which demonstrates that the development will be safe, will not increase flood risk elsewhere, and, where possible, will reduce flooding.
14. In this case, no site specific Flood Risk Assessment has been submitted. Nevertheless, a recent Flood Risk Assessment for a site of 32 proposed dwellings on Mason Road well within 0.5km of the appeal site and also principally in Flood Zone 3 has been submitted. From the EA Historic Flood Map (1:10,000), it is evident that no flooding by any of the identified sources has occurred within 0.5km of the Mason Road site and so that would include the appeal site. The development is minor development in terms of paragraph 167 of the NPPF and so is not subject to the flood-related sequential test or exception tests in national policy.
15. In addition to the information in the Mason Road FRA, the building has been raised up on concrete slabs located on permeable gravel, allowing for surface water drainage and a high finished floor level. It has been located where a shed and a greenhouse of similar footprint to the cabin were previously located and where the proposed occupant can gain easiest access to the host dwelling, utilizing existing concrete paving rather than laying any further non-permeable materials.
16. Overall, notwithstanding the lack of a site-specific flood risk assessment, I am satisfied that the spirit of policy EN7 is met and it has been demonstrated that the development is safe and does not increase flood risk elsewhere.

Conclusion

17. Having taken into account all representations made, and considered all possible forms of potential flooding, for the reasons given above, I allow the appeal.

Megan Thomas Q.C.

INSPECTOR