
Appeal Decision

Site visit made on 31 May 2023

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 15 June 2023

Appeal Ref: APP/W3520/W/22/3312096

Land at Rosemary Cottage, 60 Chapel Road, Old Newton, Suffolk IP14 4PP

- 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 David Towler against the decision of Mid Suffolk District Council.
 - The application Ref DC/22/03345, dated 1 July 2022, was refused by notice dated 7 September 2022.
 - The development proposed is the erection of a detached dwelling following the demolition of the existing garage.
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Decision

1. The appeal is dismissed.

Main issues

2. Based on the Council's reasons for refusal, the main issues in the appeal are as follows:
 - whether the proposed development is acceptable in this location, having regard for the relevant planning policies relating to development in the countryside;
 - the effects of the development on the setting of Rosemary Cottage;
 - and the effects on living conditions at No 64 Chapel Road.

Reasons for decision

Policy considerations

3. Rosemary Cottage forms part of a short row of houses fronting the east side of Chapel Road, in an area of countryside, outside the village of Old Newton. To the side of the existing house, and within its garden, is a brick-built double garage. The development now proposed would replace this with a new detached dwelling.
4. In the Mid Suffolk Core Strategy (the MSCS), adopted in September 2008, Policy set out the settlement hierarchy which forms the basis for the plan's overall development strategy. New housing and other development are to be located mainly in the towns of Stowmarket and Needham Market, and to the area's 12 key service centres. In 'primary villages' such as Old Newton, some development is to be permitted, but such development is to be for local needs, and contained within the relevant settlement boundaries. The stated purpose is to ensure that development supports existing communities and contributes

to the creation of safe, sustainable and liveable mixed communities with good access to jobs and services.

5. In the countryside, MSCS Policy CS2 restricts development to certain defined categories, including agriculture, 'rural exceptions' housing, and the re-use and adaptation of existing buildings. In addition, saved Policy H7 of the Mid Suffolk Local Plan (the MSLP), adopted in September 1998, requires housing outside settlement boundaries to be strictly controlled, to protect the countryside's character and appearance.
6. Together therefore, these development plan policies all seek to restrict the amount and type of housing development in the countryside, except where a limited number of specific types of exceptions are permitted. The relevant legislation¹ requires that planning decisions be made in accordance with the development plan, unless material considerations indicate otherwise.
7. In the present case, the appeal site is located outside the settlement boundary as defined on the Proposals Map. There is no suggestion that the development is intended to meet any specific, identified local need, either for agriculture or any other purpose, nor that it could qualify as a rural exception. The proposed scheme would also not retain or convert the existing garage building. There is no evidence or suggestion that any of the other specified criteria are applicable. The appeal proposal therefore falls within none of the allowable exceptions to Policies CS1, CS2 and H7, and would thus be contrary to the strategy that this suite of policies are designed to achieve. As such, the scheme conflicts with the most relevant development plan policies relating to development in the countryside.
8. The appellant suggests that the policies of the MSCS and MSLP are out of date, because their approach to development in the countryside is more restrictive than that in paragraphs 79 and 80 of the National Planning Policy Framework (the NPPF). However, what those paragraphs advocate is simply that rural housing should be located to enhance the vitality of communities, and that new homes should not be permitted in locations that are isolated. In the present case I can see nothing in the relevant development plan policies for the Mid Suffolk area that is inconsistent with this advice. Contrary to the appellant's arguments, there is nothing in the NPPF that advises against the use of settlement boundaries, or against policies of restraint in the countryside. Nor does paragraph 80 suggest that decisions should rest solely on whether or not a site is isolated.
9. I appreciate that the MSCS and MSLP are both of some age, pre-dating the original and current versions of the NPPF, but this alone does not make policies out of date. This is especially so in the present case, where it is not disputed that the area has far in excess of a 5-year housing land supply. And in any event, the aims behind the MSCS and MSLP policies identified above seem to me to clearly reflect the intentions of other relevant NPPF policies, such as paragraph 174 relating to the countryside's intrinsic character and beauty, and also paragraph 105 with regard to managing patterns of growth to promote sustainable travel. In the absence of any clear inconsistency with the NPPF as a whole, or any other evidence to the contrary, I see no reason to treat Policies CS1, CS2 or H7 as being out of date. I note that varying views on this question have been expressed on occasions by inspectors in other appeals, and

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

indeed by the Council itself or its officers. But I have formed my own view, based on the evidence before me now, and taking account of the current planning circumstances.

10. I fully accept that the appeal site is quite close to the village primary school, and to both the Parish Church and the Methodist Chapel and meeting hall. The addition of a new dwelling would have the potential to help support these facilities, as well as the village's other services, albeit that the latter are mainly in the village centre, which is significantly further away, via rural roads. But these circumstances are not particularly unusual, and thus to make an exception on these grounds alone would tend to undermine the relevant policies, including CS1, CS2 and H7.
11. As the appellant points out, it is possible that the current policy approach may change, and in this context it appears that Policy LP01 of the draft Babergh and Mid Suffolk Joint Local Plan, if eventually adopted, would allow more scope for some small infill developments outside settlement boundaries. But as currently proposed, it appears that that policy applies only where there is an existing nucleus of 10 dwellings. That is not the case at the present appeal site. But in any event, the draft plan is evidently still under examination, and thus carries limited weight in the present appeal.
12. I note that planning permissions have been granted by the Council for five dwellings at School Road, and two dwellings at Brown Street, both sites being outside the Old Newton village boundary. However, there is no evidence before me as to the reasons behind these decisions. The School Road site is directly adjacent to the School itself, and in that case the proposal was for self-build development; in both these respects, the present proposal is clearly distinguishable. A third permission is also said to have been granted, for two dwellings on land south of Rosemary Cottage, but in this case no details have been provided. In the absence of further information on any of these cases, it is not possible to judge the extent to which the circumstances were or were not comparable to those of the present appeal. In any event, any inconsistency on the Council's part would be a matter for the Council itself. As already explained, I have reached my own view, based on the evidence available.
13. I conclude that, due to the appeal site's location in the countryside, the proposed development would conflict with Policies CS1, CS2 and H7 relating to the location of new housing. There are no good reasons for giving these adopted MSCS and MSLP policies less than full weight. The conflict with the development plan in this regard weighs heavily against the proposed scheme.

Effects on the setting of Rosemary Cottage

14. Rosemary Cottage is a detached dwelling, dating originally from the early 18th century. The main part of the building is two-storey, of timber-frame construction, with a rendered exterior. The roof is steeply pitched and thatched. The first floor accommodation is contained within the roof structure, and lit by a row of four eyebrow dormers. At the south end is a single storey, lean-to addition, with a distinctive brick chimney. Visually, the property is highly attractive and individual, with great charm and character. The building is listed Grade II, and as such is a designated heritage asset. Its significance appears to me to lie in its historical and architectural value as an example of the local vernacular from the period of its construction.

15. The proposed new dwelling would stand within the listed property's side garden, approximately 12m to the north of the existing house. The main part of the new dwelling would have one and a half storeys, with two small dormers on the front roof slope, and a wider, cat-slide dormer on the rear. On the side further from Rosemary Cottage, the new building would step down to single storey. The principal materials would be render and vertical timber cladding, with a slate roof and aluminium windows.
16. The development would occupy land within the ownership and curtilage of Rosemary Cottage, and thus within its setting. The property's garden would thus be reduced somewhat. I note the Council's contention that the size and shape of the existing plot are a reflection of the evolution of land ownership and farming practices in the area, and are also a distinctive feature of the local landscape; and that, as a result, these features contribute to the listed building's significance as a heritage asset. However, no further evidence has been produced to support these assertions, nor is there any other information as to the property's historic curtilage, or its relationship with any part of the surrounding land. To my mind it is indisputable that the size and shape of the plot are a result of land ownership, but this on its own does not demonstrate any contribution to historical significance. No part of the land appears to have any continuing relationship to agriculture, and there is no explanation as to how it is considered to contribute to the wider landscape. Visually, the size and shape of the plot occupied by Rosemary Cottage appear fairly unremarkable, and to my mind this impression is not dispelled by any of the submissions made, or any other evidence on the matter.
17. In any event, the land that would be retained within Rosemary Cottage's redefined curtilage would be quite extensive. The property would continue to have gardens to the front, rear, and both sides; on the side nearest to the new dwelling, the width of the retained garden would be more than 10m. In contrast, the land that is now proposed to be severed represents a relatively minor portion of the plot as a whole. Furthermore, that area is already physically demarcated from the remainder of the plot by a brick wall, and that wall is proposed to remain as a boundary feature, unchanged apart from the blocking up of the connecting gateway. From the information presented, I find no evidence that the subdivision of the existing plot in this way, and the resultant reduction in the curtilage of Rosemary Cottage, would adversely affect the listed building's significance.
18. With regard to the proposed new dwelling itself, the design would clearly be more modern than Rosemary Cottage or any of the other nearby buildings, but nevertheless, its style would not be overtly contemporary. In terms of built form, the building would be relatively simple in its plan form and overall external envelope, and yet it would incorporate a degree of articulation, achieved through the division between its main and subsidiary elements, with the latter having a recessed front and lower ridge. The main roof would have a conventional dual-pitched shape. The dormers would be few in number and modestly sized; and although the design of these may not accord with the historic vernacular, they would be proportionate to the scale of the new building, and in keeping with its style in all other respects. In terms of its size, the new building would be a good deal narrower than Rosemary Cottage, no taller, and only slightly deeper; its overall mass would thus be noticeably smaller. As a whole, it seems to me that the proposed design would result in a building that would be both attractive and distinctive in its own right, and yet

sufficiently unassuming and subservient to be able to take its place in this rural setting, amongst the nearby older buildings including Rosemary Cottage.

19. Furthermore, the existing garage that the new dwelling would replace is a moderately large building, with two up-and-over vehicular doors, a gabled roof with oriel window, and a paved parking area for three cars. The garage is essentially a utilitarian structure which contributes nothing to the listed building's setting. By comparison, the new building would be slightly wider and somewhat taller than the garage, but in my view still subservient to Rosemary Cottage, for the reasons already stated. This comparison with the existing situation reinforces my view that the impact on the setting of the listed building would be limited.
20. Having regard to all of the above considerations, I conclude that the proposed development's overall effect on the setting of Rosemary Cottage would be neutral.
21. The Council has drawn my attention to various other listed buildings in the general area, including the Parish Church, which is Grade I, and Church Farmhouse, Bassets, The Cottage and Hope Cottage, which are all Grade II. However, it appears that all of these are some distance from the appeal site, and there is no suggestion of any visual, functional or other connection with any of them. The Council acknowledges that any impact on the settings of these other buildings would be less than on Rosemary Cottage; and in any event, none are included in the relevant refusal reason. On the evidence available, I am satisfied that none of these other heritage assets would be affected.
22. I conclude that the proposed development's effect on Rosemary Cottage would be to leave its setting and significance unharmed. The settings of this and all other heritage assets in the locality would thus be preserved. As such, the scheme would accord with MSCS Policy CS5 and MSLP Policy HB1, which jointly seek to protect and enhance the character and appearance of the historic environment.

Effects on the neighbouring property

23. The adjoining property, No 64 Chapel Road, is sited fairly close to the boundary with the appeal site, albeit with space for a path running between, alongside the boundary fence. In its flank wall facing the boundary, there are three windows, which are said to serve the kitchen, hallway and a bedroom.
24. The proposed new dwelling would be sited to the south of No 64, at about 1-2m from the boundary. The nearest part of the new building would present a gable ended roof over single-storey accommodation. By way of comparison, the existing garage is about 3-4m from the boundary, and has a lower ridge line, with the roof slope running away from the boundary. The new building would thus have a greater impact than the existing, on light to No 64's flank windows, and on the outlook from them.
25. None of the rooms affected are main living rooms. But kitchens and bedrooms are rooms in which occupiers are likely to spend significant amounts of time, and consequently where good living conditions are important. In the present case there is no evidence that demonstrates that good living conditions would be maintained in these affected rooms.

26. I appreciate that, in any modern dwelling or extension, it would be unwise and undesirable for main rooms to depend on light or outlook across property boundaries. But where such situations exist, the living conditions of the occupants are an important consideration. In the present case, there is no evidence as to whether either the kitchen or bedroom are solely dependent on the windows in question. Nor is there any technical evidence as to whether the degree of impact on those windows would be such as to make living conditions unacceptable. But in the absence of any clear evidence or submissions to the contrary, it seems right to err on the side of caution.
27. The hallway is not a habitable room, and therefore any impact on that space is not determinative. The new dwelling would have no windows in its end elevation, and thus no window-to-window overlooking would occur. From the new dwelling's bedroom 1, it would be possible to overlook No 64's front and rear gardens, but this would be no different from any other side-by-side relationship between neighbouring properties; such situations are not normally regarded as harmful. The traffic movements arising from the new dwelling would simply replace those associated with the existing garage, and would therefore not be likely to result in any material increase in noise. None of these matters therefore justifies refusal. But nonetheless, my concerns outlined above remain.
28. I conclude that the proposed development would risk causing unacceptable harm to living conditions at No 64 Chapel Road, by reason of its impact on the light and outlook enjoyed by the side kitchen and bedroom windows of that property. Such impacts would be contrary to MSLP Policy H16, which seeks to protect the amenity of adjacent properties.

Other matters

29. The appeal proposal would take away Rosemary Cottage's existing garaging and car parking facilities. The appellant proposes to replace these by way of a new 'cart lodge' style garage, with its own new access and turning area, in another part of the property's curtilage. That development is evidently the subject of a separate application. At the date when the submissions for the present appeal were prepared, this second application was apparently undetermined. I am not aware of any change since then.
30. With regard to the present appeal, the position of the Highway Authority is that permission should not be granted until and unless alternative parking arrangements for the existing property have been approved. To my mind, there is considerable force in this submission, because Chapel Road is narrow, and any increase in parking on it would be likely to cause danger. Permitting the present appeal proposal without any approved alternative parking, and without any means of securing the actual provision of that alternative, would seem likely to run a real risk in that regard.
31. The situation is further complicated by the fact that the Conservation Officer has evidently expressed concerns about the proposed cart lodge garage; and it seems fairly obvious that any decision on that development is likely to involve other issues too, including highway safety and trees. Whilst it is not for me to consider the merits of that proposal, neither can I assume that the outcome will be straightforward.

32. Neither the appellant nor the Council has offered any suggestions as to how this uncertainty might be overcome. In the absence of a permission for the cart lodge, the provision of that building, or any other alternative, is outside the control of the appellants, and thus not ideally suited to a 'Grampian-style' negative condition. No undertaking or agreement is before me.
33. In the circumstances, I conclude that the appeal proposal as it stands would have the effect of leaving the existing property Rosemary Cottage without adequate parking, to the detriment of highway safety. Although this is not referred to in the Council's refusal reasons, and irrespective of my findings on the main issues set out above, the potential effects on highway safety add further weight against any grant of permission for the appeal proposal.

Planning balance and conclusion

34. For the reasons explained in this decision, the appeal proposal would conflict with Policies CS1, CS2 of the MSCS and Policy H7 of the MSLP, jointly relating to housing strategy and the protection of the countryside. It would also risk conflict with MSLP Policy H16 relating to residential amenity. No development plan policies have been identified that support the development. The proposed scheme is therefore in conflict with the development plan as a whole. In addition, the development would cause harm to highway safety.
35. In its favour, the development would increase the area's stock of housing, but given that the area has a large surplus in its 5-year supply, this carries relatively modest weight. The scheme would also have some other economic and social benefits, including support for local services, but in total these carry limited weight. The lack of harm to the heritage asset Rosemary Cottage is neutral. The scheme's benefits therefore do not outweigh the conflict with the development plan.
36. I have taken account of all the other matters raised, but none changes or outweighs these conclusions. The appeal is therefore dismissed.

J Felgate

INSPECTOR