



Appeal Decision

Site visit made on 19 October 2023

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/W3520/W/23/3315619

Oakhill Nursery/Oakhill Lodge, Flordon Road/Jacks Green Road, Creting St. Mary, Suffolk IP6 8NA

- 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 & Mrs K Sturgeon against the decision of Mid Suffolk District Council.
 - The application Ref DC/22/05465, dated 2 November 2022, was refused by notice dated 5 January 2023.
 - The development proposed is erection of detached annexe.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19th September 2023, the Council received notification that the emerging Babergh and Mid Suffolk Joint Local Plan (eLP) had been found sound, subject to main modifications. Both parties have referred to the emerging policy in their statements and I have taken those comments into account when reaching my decision.

Main Issues

3. The main issues are:
 - whether the proposed development would constitute a separate unit of residential accommodation rather than an ancillary use; and
 - if the proposed development would constitute a separate unit of residential accommodation, whether the site is a suitable location for development.

Reasons

Whether a Separate Unit of Residential Accommodation

4. The proposal is for a detached annexe and it is on that basis that the appeal should be determined. There would need to be compelling reasons to dismiss the appeal on the basis that the proposed annexe would be tantamount to a new dwelling. Mid Suffolk Local Plan (September 1998) (LP) Policy H19 does not specifically address detached annexes. However, the Council has not sought to argue that the proposed development is contrary to policy because it is detached. It is also noted by both parties that eLP Policy LP02 does not refer to the form of proposed annexes. Having regard to the advice in the National Planning Policy Framework (the Framework), I have no reason to consider LP Policy H19 as out of date.

5. The proposed annexe would comprise an open plan living/dining/kitchen space, a snug, two bedrooms, a bathroom, shower room and utility room. Parking would be provided on land used for parking for the nursery and there would be private amenity space around the annexe. It would be sited some 55m from the existing dwelling. There are a number of intervening buildings associated with the nursery between the host dwelling and the proposed annexe. Access would be via an existing path that leads from the house to the nursery and through those structures. Its footprint, although not floorspace, would be greater than that of the host dwelling. Consequently, the proposed annexe would not be modest in scale. It would be readily capable of independent occupation from the host dwelling due to the separation distance, intervening structures and the scale and extent of facilities available to future occupiers.
6. The appellant refers to there being some reliance on the host property for the shared garden area, use of facilities and services, and sharing of meals. However, given the scale of accommodation proposed in the annexe, it seems unlikely that this would be the case. It would be capable of meeting the needs of occupiers with no reliance on the host dwelling. There is no evidence before me to show that there would be any functional connections between the proposed annexe and the existing dwelling. While the desire to minimise disruption to the existing building is understandable, it would not justify allowing an annexe at such a distance from the host property.
7. As a matter of fact and degree, the proposed annexe would be able to function as a separate, independent unit of residential accommodation. Although the appellant has indicated they would be willing to accept a condition requiring ancillary occupation of the annexe, it is unlikely that such a condition would be effective or enforceable in this case. Having regard to the details of this site, and with regard to the findings in *Uttlesford DC v SSE & White [1992]*, it is my view that the annexe could not be regarded as an ancillary building and it would be tantamount to a new dwelling.
8. Both parties have referred to several examples where detached annexes have been approved by the Council. From the evidence before me, this site appears to be distinguished from the majority of these by the distance between the properties, the intervening nursery buildings and the lack of shared facilities. These examples do not provide a compelling reason to reach a different conclusion from that I have set out above.
9. The proposed development would therefore constitute a separate unit of residential accommodation. It would therefore be contrary to LP Policy H19 which seeks to ensure that annexes are modest in scale.

Suitable Location

10. It is not in dispute that the site is outwith any development limit. There is no substantive evidence before me to demonstrate that the proposed dwelling would be accessible to services and facilities for day to day living by any means of transport other than the private car.
11. The appellant has referred to other recently approved development in the surrounding area, and I observed new dwellings under construction in the vicinity of the appeal site. However, I do not have the full details of those permissions before me and must consider this issue on the evidence before me.

12. The site would therefore not be a suitable location for development. It would be contrary to Core Strategy Development Plan Document (September 2008) Policies CS1 and CS2 and LP Policy H7 which taken together and insofar as they relate to this appeal, seek to direct development to the most sustainable settlements. It would also be contrary to the relevant policies of Section 9 of the Framework which seek to promote modes of travel other than the private car.

Other Matters

13. The proposal would be to allow for support to be provided to the existing occupier of Oakhill Lodge. The desire of the appellant to remain in the family home within their community is acknowledged. It has also been put forward that the existing occupier could move the annexe and allow a family member to move into the existing dwelling with their family. However, there is no compelling evidence to suggest why it would be necessary for the annex to be of such a scale and located such a distance from the host dwelling.
14. I have had due regard to the Public Sector Equality Duty ('the PSED') contained in Section 149 of the Equality Act 2010 ('the Act'), which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not. The Act sets out the relevant protected characteristics which include disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act.
15. The negative impacts of dismissing this appeal would arise from the family member not living in proximity to the appellant to provide additional support. However, it does not follow from the PSED that the appeal should succeed. I have taken into account the personal circumstances of the appellant. However, from the information before me, I am not convinced that their needs cannot be achieved by an action that would comply with the policy in the development plan. My actions in this respect, and my decision therefore on the appeal, are a proportionate response to the requirements of the Act and those of the plan led system.
16. Paragraph 48 of the Framework advises that weight may be given to relevant policies in emerging plans subject to certain criteria. ELP Policy LP02 concerns residential annexes and sets more detailed considerations. It requires the proposed annexe to be ancillary and subordinate to the host dwelling, and for it to be designed to be easily integrated later into the main dwelling. Although the proposed development would not involve the physical sub-division of residential curtilage, I consider the proposal would overall conflict with eLP Policy LP02. As the eLP has been found sound, although not adopted, I attach moderate weight to the proposal's conflict with it.
17. It may be that a building on the wider site could benefit from permitted development rights to be converted to a dwelling under Schedule 2 Part 3 Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015. However, any such right would be subject to the conditions and limitations of that Class, and there is no substantive evidence before me as to whether such a proposal would accord with these. I therefore attach limited weight to the prospect of this development taking place.

18. No concerns have been raised with regard to contamination, flooding, drainage, highways, living conditions or design. However these would be expected of any well designed development and would amount to neutral factors in the determination of this appeal.

Conclusion

19. The proposed development would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be taken otherwise. The appeal should therefore be dismissed.

J Downs

INSPECTOR