



Appeal Decision

Site visit made on 20 November 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2023

Appeal Ref: APP/X3540/D/23/3316077

Journeys End, Marsh Lane, Felixstowe IP11 9RR

- 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 Terence Davey against the decision of East Suffolk Council.
 - The application Ref DC/22/3931/FUL, dated 5 October 2022, was refused by notice dated 6 December 2022.
 - The development proposed is ancillary annex adjoined to applicant's workshop.
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Decision

1. The appeal is allowed and planning permission is granted for ancillary annex adjoined to applicant's workshop at Journeys End, Marsh Lane, Felixstowe IP11 9RR in accordance with the terms of the application, Ref DC/22/3931/FUL, dated 5 October 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 20195-696-01 Rev A (Land Registry Title Plan Journeys End); 20195-696-02 Rev A (Land Registry Title Plan Journeys End Summer House); 20195-696-03 Rev A (Land Registry Title Plan Journeys End Access); Plan referenced 'Proposed Plans & Elevations' and Plan referenced 'Photos and 3D Visual Drawings'.
 - 2) The development hereby permitted shall not be occupied or let as a separate dwelling but shall be used only for purposes ancillary to the residential use of the dwelling known as Journeys End.

Preliminary Matters

2. I have taken the description of development from the application form, omitting wording that is not an act of development.
3. The appeal has been submitted under the householder appeal service. The application was submitted to the Council as a householder development and was validated and determined on that basis. The Council have addressed the separate ownership of the ancillary building and the host dwelling in their submissions at both the application and the appeal stage. I am therefore satisfied that the appeal can proceed by way of the householder appeal service and that no party would be prejudiced by my so doing.
4. As the building subject to this appeal had already been constructed and used as accommodation at the time of my site visit, the proposal is retrospective.
5. The appeal site lies within the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (AONB). Since the appeal was submitted, AONBs in England and Wales became 'National Landscapes'. The legal designation and policy

status of AONBs/National Landscapes are unchanged. As such, no party has been prejudiced by the change in name.

Main Issue

6. The main issue is whether the development constitutes an ancillary residential annexe or whether it would be tantamount to a separate independent dwelling.

Reasons

7. The appeal site is occupied by a detached dwelling that is located centrally within the residential plot. Close to the south-east boundary of the dwelling's rear garden are two single-storey outbuildings. Evidence indicates that the larger of the two outbuildings has been in situ for a considerable number of years but was recently extended with a single storey addition to its eastern side.
8. The rear part of the outbuilding, including the extension, is used as a residential annex. It provides accommodation comprising of a separate bathroom and an open plan bedroom, lounge, dining area and a full range of kitchen facilities. The front part of the outbuilding is used as a garage/workshop by occupants of the main dwelling.
9. The site lies outside the settlement limits of Felixstowe, in open countryside. Parking for the dwelling is located on a gravel area at the front of the dwelling and a timber gate provides access at the side to the rear garden. At the time of my site visit, I observed that the garden was laid to lawn with several trees and shrubs within the site and along most of the boundaries. There was no sub-dividing fence between the dwelling and the outbuilding.
10. Policy SCLP5.13 of the East Suffolk Council Suffolk Coastal Local Plan 2020 (SCLP) relates to residential annexes. Criteria a) to g) and the supporting text of this policy set out factors to be considered when assessing whether the development would be considered as ancillary to the existing dwelling or as a separate dwelling.
11. Even though the outbuilding has been extended, in the context of the size of the overall garden area, it is of a notably smaller and unobtrusive scale than the main dwelling and sited relatively close to it. It would therefore maintain a subordinate relationship with the main dwelling.
12. I observed at my site visit that there was no physical separation of the residential curtilage. Although the evidence presented by both main parties indicates that the garden has previously been separated by a low fence, the appellant claims that this was to separate dogs belonging to the occupants of the main house and those of extended family staying in the annex.
13. It would be possible to sub-divide the garden with little adaption and while a low fence is indicated on the submitted plans from the east elevation of the annex to the site boundary, no dividing fence is indicated on the west elevation to the site boundary. Therefore, even if a dividing fence is erected in the position shown, it would not completely separate the annex from the dwelling.
14. The arrangement of the shared vehicular parking area and the current garden layout poses challenges in terms of separate occupancy of the annex, particularly as the annex is housed in the same building as the

garage/workshop and is adjacent to a smaller outbuilding. Both of these are used by occupants of the main dwelling and could generate noisy activities. Furthermore, pedestrian access to the annex via the existing patio doors requires passing through the garden of the main dwelling and any separate vehicular access created would pass close to windows on the side elevation of the main dwelling.

15. Even though the annex is at the far end of the garden, it is located within the clearly vegetated and fenced garden boundary that is intimately associated with the host dwelling. Furthermore, it sits in reasonable proximity to the dwelling having regard to the size of the residential plot and the degree of intervisibility between the two buildings. To reach the main dwelling, occupants of the annex only need to take a brief walk across the flat terrain of the current garden.
16. Even though this appeal does not relate to a certificate of lawfulness, it is clear from the submissions that a residential annexe has been in situ at the appeal site for the use of family and friends for many years. Moreover, on the evidence before me, utilities associated with the annex, including electricity, water and septic tank are connected to the main dwelling.
17. Consequently, the annex is well related to the host dwelling and for the above reasons, would be clearly ancillary to it. It would therefore satisfy the requirements of a) to d) of Policy SCLP5.13. The Council's officer report confirms that there is no objection in relation to criteria e) to g) of this policy and I have no reason to disagree.
18. My attention is drawn by the Council to the fact that the outbuilding was extended, and a larger annex formed which is now in separate ownership to the main dwelling and that this implies it is an independent residential unit known as Watch House. The appellant does not dispute that the annex is in separate ownership but claims that it was transferred to his daughter for tax purposes. The main house will also be transferred to joint ownership, although there is no evidence to support this claim.
19. Although land ownership is a factor, it is not in itself conclusive that it is occupied or used separately, rather, it is a matter of fact and degree. Irrespective of who owns which part of the site, for the reasons I have set out above, the dwelling and garden, including the annex, form a single planning unit. As such, whilst severed by ownership, the annex is not severed as a planning unit. In addition, same ownership is not a requirement of Policy SCLP5.13. Despite the recent enlargement of the annex and reference to a separate name for the building, I have no substantive evidence before me to demonstrate that the use of the building is not ancillary to the main dwelling or for purposes incidental to the enjoyment of the dwelling or that it is being used as a separate dwelling.
20. I acknowledge that the internal accommodation includes all the facilities for independent living. However, the courts¹ have held that even if accommodation provides facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling, this would be a matter of fact and degree. There is no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.

¹ Uttlesford DC v SSE & White [1992] JPL171

21. The appellant has made it clear that the intention is to use the annex as ancillary accommodation for relatives and friends when staying with the appellant, not as a separate dwelling. If the outbuilding is not used as proposed, or if there is a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required, and the building would be at risk of enforcement action if such permission is not granted.
22. Furthermore, Policy SCLP5.13 of the SCLP sets out that 'conditions or planning obligations will be applied to limit occupation to use as an annex and to prevent future use as a separate dwelling in accordance with national policy for planning conditions and obligations'. I note that the Council suggest such a condition, and this would secure the building as ancillary accommodation.
23. For the reasons outlined above I conclude that the development constitutes an ancillary residential annexe and is not a separate independent dwelling. It therefore complies with Policy SCLP5.13 of the SCLP which seeks to limit the creation of new dwellings in the countryside.

Other Matters

24. Whilst not a reason for refusal, the Council's officer report refers to Policies SCLP5.3, 5.4 and 5.5 of the SCLP with regards to housing in the countryside. However, as I have found the development is not a new dwelling, there is no need for me to consider the development against these countryside protection policies of the SCLP.
25. The appeal site lies within the recreational disturbance Zone of Influence of various Habitats Sites along the East Suffolk coast. However, I am aware that the requirement for recreation effects to be mitigated only applies to the creation of new dwellings. For the above reasons, the development does not involve the creation of a new dwelling, therefore it is not necessary for me to further consider the implications in this regard.

Conditions

26. I have considered the use of conditions in line with the guidance set out in the National Planning Policy Framework and the Planning Practice Guidance. I have also considered the condition suggested by the appellant and the Council.
27. The standard implementation condition is not required as the development has already taken place. I have imposed a condition in respect of detailing the approved plans for certainty as to what has been approved. A condition is also necessary to ensure the annexe remains ancillary to the main house and prevent it from being used or occupied as a separate independent dwelling and ensure compliance with Policy SCLP5.13 of the SCLP. However, I have removed unnecessary wording from the Council's suggested condition which is overly prescriptive and is not required to ensure the annex is used only for ancillary purposes.

Conclusion

28. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Veevers INSPECTOR