



Appeal Decision

Site visit made on 10 July 2024

by R Cahalane BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th September 2024

Appeal Ref: APP/L3815/W/24/3339556

Brook Cottage, Farm Lane, Nutbourne, Chichester PO18 8SA

The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.

The appeal is made by Mr C Cairns against the decision of Chichester District Council.

The application Ref SB/23/00891/FUL, dated 28 June 2023, was refused by notice dated 10 October 2023.

The development proposed was described as: "Retrospective application for a shed".

Decision

1. The appeal is allowed and planning permission is granted for a shed at Brook Cottage, Farm Lane, Nutbourne, Chichester PO18 8SA in accordance with the terms of the application, Ref SB/23/00891/FUL, and the plans submitted with it, subject to the following condition:

- 1) The development hereby permitted relates to the following approved plan: 8985 01.

Preliminary Matters

2. The description of development in the banner heading above is taken from the planning application form and includes the word "retrospective". As this is not a form of development, I have removed this from my formal decision above. However, the application form confirms that the development has been completed and I was able to see this during my site visit. Externally, it appears to have been constructed in accordance with the submitted plan (Drawing No. 8985 01). I was able to gain access to the shed and two rooms have been created internally. Whilst the submitted plan does not include this subdivision, I do not consider that this materially alters the nature of the appeal proposal.
3. The reason for refusal in the Decision Notice refers to policies within the Southbourne Neighbourhood Plan (NP). The Council has stated that since the determination of the application, there has been a change in the status of the NP. The Southbourne Modified Neighbourhood Plan (SMNP) dated November 2023 now replaces the previous NP. A copy of the SMNP was submitted with the Council's questionnaire and its appeal statement refers to relevant policies within it. The appeal shall be determined on this basis.

Background and Main Issues

4. The officer report indicates that the development accords with the relevant local and national development plan policies with regards to visual amenity, including Policy 48 of the Chichester Local Plan 2014-2029 (CLP). However, the reason for refusal cites Policy 48 along with CLP Policy 43 which governs the

AONB. The Council has since also cited conflict with Policy SB4 of the SMNP, which is also a design policy. I have therefore also considered character and appearance and the AONB within my reasoning below.

5. The appeal site (Brook Cottage) is within Chichester Harbour Area of Outstanding Natural Beauty (AONB). Subsequent to the Council issuing its decision notice, on 22 November 2023 all designated AONBs became "National Landscapes", although they are still referred to as AONBs in legislation and policy. On 26 December 2023 section 245 of the Levelling-Up and Regeneration Act amended the duty in respect of AONBs, strengthening the statutory purpose of conserving and enhancing the natural beauty of the AONB. I am satisfied that there is sufficient information before me to make my determination in respect of this matter.

Main Issues

6. The main issues are:

- whether there is a need for the development in the countryside; and,
- the effect of the development on the character and appearance of the countryside within the AONB.

Reasons

Need for the development in the countryside

7. Brook Cottage comprises a detached two storey dwelling, set back from Farm Lane with a long driveway access from the road. The site is near to some other surrounding buildings, but still feels rural in character. It includes a parking/turning area and a large outbuilding to its front and side. This outbuilding contains a double garage and also has permission (LPA Ref: 21/03607/DOM) for use as a home office/gym with associated facilities. This permission also includes extensions to the main dwelling. I noted during my site visit that the main dwelling was still being refurbished, and that its garden area adjacent to its rear elevation was being remodelled by a digger.
8. Policy 2 of the CLP states that such development outside settlements is restricted to, amongst other things, that which requires a countryside location, or meets an essential local rural need, or supports rural diversification in accordance with Policies 45-46. Policy 46 is not cited in the Council's reason for refusal or its appeal statement. Policy 45 states that within the countryside, outside settlement boundaries, development will be granted where it requires a countryside location and meets the essential, small scale, and local need which cannot be met within or immediately adjacent to existing settlements. Policy 45 also states that permission will be granted for sustainable development subject to listed criteria that includes:
 1. The proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement; and
 2. The proposal is complementary to and does not prejudice any viable agricultural operations on a farm and other existing viable uses.
9. Policy SB1 of the SMNP directs development to within the defined settlement boundaries, and states that development proposals outside these boundaries are restricted to, amongst other things, those which require a countryside

location *or* meet an essential local rural need [my emphasis]. There is therefore some divergence between this policy and the above CLP 45, which seeks development to require a countryside location *and* an essential, small scale and local need.

10. The Council contends that the appeal building is sited outside of the curtilage of the main dwelling, within an area that has been converted to domestic garden without planning permission. This is disputed by the appellant who has provided historic aerial imagery to demonstrate an established garden use. The lawfulness of this land use is however not for me to determine under this section 78 appeal.
11. Notwithstanding this, as set out in the MNP policies map, the entirety of the appeal site is outside of any designated settlement boundary. Brook Cottage and all its land is therefore in the countryside. This means that any new building within the appeal site would be within the designated countryside, irrespective of its location within or outside of the curtilage of the main dwelling. Insofar as it is not physically possible to provide additional domestic accommodation that is both within Brook Cottage and within the settlement boundary, a countryside location would be required for such a proposal. Based on my reading of SMNP policy SB1, such additional development in this location is given in-principle support. Furthermore, compliance with CLP policies 2 and 45 is, as set out above, not contingent on development being within a "curtilage" of a building.
12. The appeal building is close to the western settlement boundary of Nutbourne West, which encompasses the dwelling of Smallbrook that is visible within Brook Cottage's rear garden and in the backdrop of the appeal building. Other dwellings within this settlement boundary are also visible further along the rear of Brook Cottage. The appeal building is significantly closer to the main dwelling of Brook Cottage than to its rear garden boundary fence. The appeal building is therefore well-related to an existing group of buildings and is located close to an established settlement, satisfying criterion 1 of CLP Policy 45.
13. The appeal building does not prejudice any viable agricultural operations and thus satisfies criterion 2 of Policy 45. The third and final criteria of Policy 45 relates to visual impact, and is therefore set out and assessed further below as part of the other main issue.
14. The appellant has not stated a specific need for the appeal building beyond describing it as incidental accommodation associated with the residential use of Brook Cottage. I noted that the entrance door of the appeal building leads directly to the smaller of the two rooms, with the wall partition between the entrance and the small right-hand side window. The smaller room was used for domestic storage and the overall internal decoration of the building was not complete. An internal door leads to the larger room, which contained electrical music equipment and is served by a small wall-mounted heater. Both rooms contain ceiling spotlights and wall sockets, and were not served by any other living facilities.
15. In my judgement, the above use of the appeal building could be reasonably described as incidental to the residential use of Brook Cottage. It has however not been demonstrated that the appeal building meets what could be reasonably described as an "essential" need of Brook Cottage, or any other local need beyond that of its occupiers. In this respect, the development is

contrary to policy 45 of the CLP. The weight to be attached to this harm is set out in the planning balance below.

Character and appearance

16. Brook Cottage is well enclosed by mature shrubbery and the appeal building is not visible from Farm Lane or School Lane. It is therefore not visible from surrounding public vantage points within the AONB. The AONB Management Plan, forming part of the evidence base of CLP Policy 43, lists its identified special qualities which include: the unique blend of land and sea; the flatness of the landform; and the unspoilt character and unobtrusive beauty. The concealed and domestic setting of the appeal building, together with its proximity to adjoining garden land and buildings, means that it does not encroach upon, and therefore harm, any of these special qualities.
17. From the rear of the site looking back towards Brook Cottage, the appeal building is mainly obscured by the trees within the garden. The building is of modest scale relative to the main dwelling and is on similar land level. It is also of appropriate traditional design and scale that takes account of its domestic, verdant and rural setting. The appeal building therefore respects the character and appearance of the area.
18. The development is thus in compliance with Policy 43 and criterion 3 of Policy 45 of the CLP, insofar as they require development to not detract from the distinctive character and special qualities of the AONB, and to ensure that the scale, siting, design and materials have minimal impact on the landscape and rural character of the area. The appeal building also complies with Policy 48 of the CLP and Policy SB4 of the SMNP which require, amongst other things, development to be of high quality design and to avoid adverse impacts on views in and around designated environmental areas, and the tranquil and rural character of the area.

Planning balance

19. The harm I have identified relates to an insufficient demonstration of an essential need for the appeal building in the countryside, as required by Policy 45 of the CLP. I have however found the appeal building to be of small scale relative to the main dwelling, and its scale and use is also clearly incidental to the residential use of the main dwelling. The development also meets criteria 1-3 as listed in Policy 45. Due to its small scale and incidental use, the failure to fully accord with the Policy 45 results in the building having a limited degree of harm having regard to the development plan's strategic aims of securing appropriate uses in the countryside.
20. I have however found the appeal building to benefit from in-principle support under my interpretation of SMNP Policy SB1. It also complies with CLP policies 43 and 48, and SMNP Policy SB4, in terms of avoiding a harmful impact on the character and appearance of the countryside and the features that contribute towards the AONB's special character.
21. Policy 1 of the CLP supports a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It also states that planning applications that accord with the policies in the CLP (and, where relevant, with policies in neighbourhood plans) will be approved, unless material considerations indicate otherwise.

22. For the above reasons, I have found that the appeal building accords with the development plan when read as a whole. It is therefore a sustainable form of development, and the Framework also supports development that recognises the intrinsic character and beauty of the countryside.

Conditions

23. The Council has suggested three conditions in the event that the appeal is allowed. I have considered these against the tests in the Framework and the Planning Practice Guidance. Condition 1 is necessary to confirm the approved plan, in the interests of clarity. I have however amended its wording away from the Council's suggested wording as a compliance condition, given that the development has already been completed. For the same reason, I do not consider that the Council's suggested second compliance condition regarding external materials is necessary or reasonable.
24. I also do not consider the Council's suggested third condition limiting the building to an incidental use is necessary or reasonable. Given the location and limited size of the building, I consider it unlikely that any future use ancillary to Brook Cottage would cause material harm to the character of the site or the living conditions of surrounding neighbours. Any future change of use of the building beyond an ancillary use would require additional planning permission.

Conclusion

25. For the reasons given above the appeal should be allowed.

R Cahalane

INSPECTOR