

Appeal Decision

Site visit made on 21 November 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/L2630/W/24/3341760

**Caistor Cottage, Markshall Lane, Caistor St Edmund, South Norfolk
NR14 8QW**

- 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 Tom Dunkley against the decision of South Norfolk Council.
- The application Ref is 2023/1246.
- The development proposed is a new residential annexe in the ground of Caistor Cottage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In March 2024, and since the Council made its decision, the Greater Norwich Local Plan (GNLP) has been adopted and now forms a part of the development plan. As a result, the Joint Core Strategy for Broadland, Norwich and South Norfolk has been superseded, and I give no weight to it in my decision. The main parties have been given the opportunity to provide comments on the implications of the adoption of the GNLP which I have had regard to. As necessary, I refer to the GNLP elsewhere in my decision.
3. The South Norfolk Village Clusters Housing Allocations Local Plan is emerging, but it does not form part of the development plan at this stage. Further examination of it is also yet to be undertaken and, therefore, its content could change. In such circumstances, the emerging plan is a matter of limited weight in my decision.
4. A unilateral undertaking (UU), made under section 106 of the Town and Country Planning Act 1990, has been submitted. The UU has been submitted on the basis that it would secure the observation and performance of certain covenants and obligations which would seek to ensure that the proposed building would be utilised as a residential annexe. As necessary, I comment on these matters later in my decision.
5. A screening direction was issued under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not EIA development.

Main Issue

6. The main issue is whether the proposed development would constitute an acceptable residential annexe, having particular regard to relevant development plan policy and the circumstances of its intended occupier.

Reasons

7. Caistor Cottage is a detached residential property. It is located within a spacious plot which includes front, side and rear garden areas, a tennis court, which is in a state of some disrepair, and some outbuildings including a garage, a greenhouse and a home office. Caistor Cottage is located on the edge of the small village of Caistor St Edmund which is situated within a rural area to the south of Norwich and which has no defined settlement boundary.
8. Relevant development plan policies, DM 1.3 of the South Norfolk Local Plan Development Management Policies Document (the DMPD) and 7.4 of the GNLP, direct that most development should take place within settlements. Together, and as applicable to this case, these policies also set out that housing development outside of settlement boundaries, and thereby within the countryside, should be restricted to certain exceptions. One such exception is where the proposal would amount to a residential annexe to which DMPD Policy DM 3.7 specifically relates.
9. Policy DM 3.7 offers support for residential annexes, provided they are designed so that they can continue to be used as part of the main dwelling without creating an independent unit in the future. The justification to the policy warns of the pressure that can arise for annexes to be severed from the main dwelling and that, were this to take place in a countryside location, that it would be inconsistent with those development plan policies which govern the location of new dwellings.
10. Whether or not a proposed development would properly constitute an annexe, or, alternatively, would be tantamount to an independent dwelling, is a matter of fact and degree. The extent to which there would or would not be physical and functional linkages between the main dwelling and the proposed development is key.
11. Whilst I acknowledge that the proposed building would be smaller than the existing cottage, it would benefit from 2 bedrooms, a living room, a kitchen/dining room, a shower room and a laundry room. As such, the proposed building would be self-contained, and it would contain all the facilities necessary for day-to-day living. It is proposed that the appellant's mother would reside within the proposed building together with their carer. I have no reason at all to dispute a round-the-clock level of care is needed. However, I have very limited evidence before me which explains to me in what ways the appellant's mother would be functionally reliant upon the existing cottage and its prospective occupiers (submitted to me as being the appellant and his family). Given this, the proposal's array of accommodation and that the carer would also reside within the proposed building, it seems to me that the proposed building would largely function independently.
12. Furthermore, it would be detached and, situated beyond an area of garden and a hedgerow, it would be well-separated from Caistor Cottage itself. Much of the living space and the windows which would serve them would be directed

towards garden land around the proposed building, and towards the open land in the surroundings of it, rather than toward the existing cottage. The hedgerow would provide quite an effective screen between the existing cottage and the proposal. Although the appellant submits that the hedgerow could be removed to afford greater intervisibility between the existing dwelling and the proposed building, this is not identified on the proposed plans. Furthermore, the removal of this hedge, which has some aesthetic value and, potentially, ecological value would represent a substantial evolution of the scheme which it would not be appropriate to control through the imposition of a condition had I been minded to allow the appeal.

13. Although it is submitted to me that the proposed building and Caistor Cottage would share garden land, the plans very clearly show that the proposed building would be served by a garden and patio of its own, and there would be other open space in its surroundings well-segregated from the existing house. Given this, there would seem little need to share garden land.
14. At present, in the vicinity of the break in the hedgerow where pedestrian access to the proposed building is proposed, there is a change in levels with a stepped route and, beside it, a pond. The plans are not very clear on exactly what works are proposed here: whether the existing stepped route would be altered and made level for instance. The plans show the pond as being retained. Although a new footpath would be provided between the back of the existing cottage and toward the aforementioned hedgerow break, given the distances involved, the lack of clarity on the plans and the retention of the pond, I find the route between the two buildings to be somewhat complex, and it would not be conducive to an ease of movement for the proposed building's main occupier who is both elderly and has a health condition.
15. I acknowledge that the access and driveway would be shared, and it may also be that a bin collection point would be shared. However, it is not uncommon for two households to share an access or keep bins together. It would also be quite easy for an alternative route between the driveway and the proposed building to be provided with limited interventions. It is also submitted to me that some utilities and services would be shared, but I have quite limited evidence in this regard. Furthermore, on the one hand, it is put to me that water and sewerage would be shared services, the submitted Design and Access Statement, in contrast, sets out that a new water treatment facility would serve the proposed building as Caistor Cottage's septic tank does not have sufficient capacity.
16. Given all that is before me, I find that the physical and functional linkages between Caistor Cottage and the proposed building would be very limited. So much so that the proposed building could, very easily, operate independently from the cottage and that severability of the pair of buildings would, equally, be easily achieved. For these reasons, I find that the proposed development would not constitute an acceptable residential annexe and, instead, would be tantamount to a new dwelling in the countryside. This conflicts with relevant development plan policies which I set out below.
17. The intention that the proposed building would be occupied by an elderly lady with a health condition is a matter I have had considerable regard to and in the light of Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), the Human Rights Act 1998 (HRA), and the Public

Sector Duty (PSED) under Section 149 of the Equality Act 2010. In summary, Article 8 of the HRA establishes a right for respect for private and family life and the UNCRPD recognises the equal rights of those with disabilities to live in the community with the same equal choices of others to full inclusion and participation in the community. The PSED sets out the need to eliminate unlawful discrimination, advance equality of opportunity and access, and foster good relations between persons who share a protected characteristic and those who do not share it. Both disability and age are protected characteristics to which the PSED applies.

18. These rights are engaged in reaching my decision, and I have kept these interests at the forefront of my mind. However, they are qualified rights, and interference may be justified where in the public interest. The concept of proportionality is key.
19. By residing within the proposed building, the main intended occupier would benefit from purposefully designed and built living accommodation which would enable her to live as independently as possible, in accordance with local adult social care advice, and to remain living in an area she knows well and has supportive connections.
20. In dismissing the appeal, this particular form of accommodation would not be available to her. However, and whilst the appellant's evidence includes some presentation of other options, and I accept that the site has its constraints including trees, I am not convinced that all reasonable alternative annexe or other accommodation options, which would meet both occupier requirements and relevant development plan policy, have been thoroughly explored. Caistor Cottage is a spacious property benefiting from a large plot and multiple outbuildings. I expect that there are alternative arrangements that could be devised, ones with greater functional and physical linkages to the main dwelling.
21. The submitted UU requires the first occupation of the proposed residential annexe to be by a family member or dependant of the occupier of Caistor Cottage. As a result, after the proposed building has been first occupied, the control the UU exerts over occupation falls away. For this principal reason, the submitted UU provides me with very limited assurance that the use of the proposed building as a residential annexe would endure. The submitted UU does not, therefore, address my concerns that the proposal would not continue to be used as part of the main dwelling, without the creation of an independent unit in the future.
22. In appropriate circumstances, a condition can also be utilised in order to ensure that a proposed residential annexe would only be used as such. However, in this particular case, the strength of my concerns that the proposed building would not, adequately, be functionally and physically linked to the main dwelling are such that the use of a condition in the circumstances would not be appropriate. I am not confident the proposed building would operate in a manner which would be part and parcel of Caistor Cottage. In the light of this, imposing a condition stipulating that it must do would fail the tests of reasonableness and enforceability referenced at paragraph 56 of the National Planning Policy Framework.
23. I am satisfied that the aim of avoiding the harm by reason of the proposal's conflict with the development plan policies which control residential

development in the countryside can only be adequately addressed by dismissal of the appeal. The interference with the rights of the occupants and effects upon those with protected characteristics is necessary and proportionate in this case.

24. For the reasons I have given, the proposed development would not constitute an acceptable residential annexe. As such, it would be tantamount to a new dwelling in the countryside. The proposal therefore conflicts with policies DM 1.3 and DM 3.7 of the DMPD and Policy 7.4 of the GNLP which I have summarised above. I find that the circumstances of the intended occupier of the proposal do not override this policy conflict.

Other Matters

25. Some economic benefits would be derived from the construction phase of the development. The proposal would also make use of brownfield land, reusing the deteriorated tennis court. However, these benefits would be modest, and they would be insufficient to outweigh the harm I have identified in my main issue.
26. It may be, in respect of a range of other planning considerations, that the proposed development would not result in harmful effects. This may include, amongst them, the visual effects of the proposal's detailed design and aesthetic within its context, its effects upon the highway network and upon the living conditions of neighbouring residents. Furthermore, I acknowledge that the proposal has been designed to be energy efficient. Even so, an absence of harm in respect of these matters is a neutral factor in my decision and does not outweigh the harm that I have identified.
27. I have been referred to a number of other residential annexe planning applications and appeal decisions, including those within South Norfolk. Particular focus has been placed upon the appeal decision in Surlingham¹. The amount of detail before me in relation to the cited examples varies considerably. However, all the evidence that will have been before the inspector, or before the local planning authority, even in respect of the Surlingham case, is not before me. Appeal decisions are heavily dependent on the case-specific evidence and circumstances. Although some of the cited cases have some parallels with the appeal before me, it is nevertheless not clear to me that any of them are wholly comparable to the appeal scheme. I have come to my own views on this appeal having regard to the evidence before me now, my own experience and the particular circumstances of the case. For these reasons, the submitted cases are not a strong influence upon my decision.
28. I have had regard to the submitted letters of public support as a part of my decision. However, that the proposal has attracted such support does not itself render the scheme appropriate nor overcome my concerns.

Conclusion

29. In my main issue, I have found that the proposal would not constitute an acceptable residential annexe and I have identified conflict with particular development plan policies. Further, I conclude that the proposal conflicts with the development plan read as a whole. In respect of other material

¹ Appeal decision APP/L2630/W/23/3331119

considerations, the personal circumstances of the intended main occupier of the proposal are a key consideration in the light of the provisions of the HRA, UNCRPD and PSED. However, in this case, the interference with those relevant rights and protected characteristics is for legitimate and well-established planning policy reasons, is necessary and proportionate and cannot be achieved by less interfering means. The material considerations do not, therefore, indicate a decision other than one in accordance with the development plan. Consequently, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR