



The Planning Inspectorate

Appeal Decision

Site visit made on 2 September 2019

by **Richard Aston BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 September 2019

Appeal Ref: APP/V2255/D/19/3233959

1 Brenley Bridge Cottages, Brenley Lane, Boughton Under Blean ME13 9LZ

- 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 C Riches (c/o C Riches Properties Limited) against the decision of Swale Borough Council.
 - The application Ref 19/501731/FUL, dated 18 March 2019, was refused by notice dated 28 June 2019.
 - The development proposed is alteration to domestic garage to provide annexe to main dwelling house.
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Decision

1. The appeal is allowed and planning permission is granted for alteration to domestic garage to provide annexe to main dwellinghouse at 1 Brenley Bridge Cottages, Brenley Lane, Boughton Under Blean ME13 9LZ in accordance with the terms of the application, Ref 19/501731/FUL, dated 18 March 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: BBC1832.01, BBC1832.02, BBC1832.03, BBC1832.04, BBC1832.015, BBC1832.06, BBC1832.07 and BBC1832.08.

Application for costs

2. An application for costs was made by Mr C Riches (c/o Riches Properties Limited) against Swale Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. On my reading, the reason for refusal relates to the effects of the external alterations on the character and appearance of the building and area. However, the minutes of the relevant committee meeting show there was clearly some concern over whether a separate dwelling would be created in this countryside location. This includes reference to Policy ST3 regarding the settlement strategy of the Bearing Fruits 2031 – The Swale Borough Local Plan, adopted July 2017 ('LP'), which is reflected in some of the member discussion and included in the reason for refusal.

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4. It is not the role of an Inspector dealing solely with an application for planning permission to conduct an exercise as to lawful operations or use (such as would normally be formally determined by a lawful certificate application). Nevertheless, in this case the appellant applied for alterations to an existing domestic garage to form an annexe and not a separate dwelling. Unless there is evidence to the contrary from the Council, an appellant is entitled to have the proposal determined as applied for.
5. Moreover, the annexe would have 2 bedroom areas upstairs and a living area and shower room/WC with storage area downstairs. No kitchen or cooking facilities are shown on the submitted plans and the first floor would have a somewhat restricted head height. I therefore have some doubts that it would have the necessary facilities to make it capable of being independently occupied as a separate dwelling. Even if it had, or these were added at a later date, the overriding consideration established in case law¹ is that even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling, it is the actual use. This approach is consistent with the Ashfield Court Farm, Newington appeal decision that I have been referred to².
6. Because of the particular layout and circumstances of this rural property, with the 2 buildings separated by a shared access used by farm machinery there are restrictions on increasing the living accommodation of the main building. There would also be no subdivision of the planning unit and the existing access and parking arrangements would remain. Circumstances could change in the future but that has no bearing on the planning merits of this appeal and the Council's ability to take appropriate action, if necessary, would not be fettered. For the purposes of this appeal I have therefore treated the proposal as applied for and not for a separate dwelling. As such, the reference to Policy ST3 is not relevant insofar as the adopted settlement strategy is concerned.

Main Issue

7. Given the above, the main issue is the effect of the proposal on the character and appearance of the area.

Reasons

8. This is a large outbuilding clearly seen and appreciated as part of No. 1 Brenley Bridge Cottages, a semi-detached rural dwelling that sits in a narrow rural lane surrounded by open countryside. The external changes amount to the removal of the 2 roller shutter garage doors at either end of the building and their replacement with stained timber doors and a glazed panel. A new single timber side door and the insertion of 2 rooflights in each roof slope are also proposed. I observed 2 rooflights had already been installed facing the lane but these appeared entirely proportionate, unobtrusive and had no harmful visual effects.
9. Although the changes before me could be perceived as adding an element of domesticity these are relatively minor changes to the external appearance of a rural domestic outbuilding in an area where there is a mixture of building types, sizes, designs and styles and from different periods, including buildings altered from their original use, form and appearance. To my mind, the alterations would not result in the building appearing as a separate dwelling.

¹ Uttlesford DC v SSE & White [1992].

² APP/V2255/D/19/3223271.

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10. Having visited the site, the building is somewhat prominent but the low key alterations before me would only ever be partially glimpsed on the approaches immediately past the appeal site and from what is a narrow rural lane with substantial boundary hedgerows and trees. In my view, there would be no material harm to the character or appearance of the building or the visual interests of its rural surroundings, including the character of the rural lane.
11. For these reasons, the proposal would not cause harm to the character and appearance of the area. Consequently, it would not conflict with Policies CP4, DM14 and DM26 of the LP insofar as they seek to delivery good quality development and homes, to not significantly harm the character of rural lanes and require recognition of the intrinsic character and beauty of the countryside.

Conditions

12. I have considered the conditions put forward by the Council and a condition is required to ensure compliance with the approved plans as this provides clarity. The Council have however suggested 2 further conditions, securing the future occupation of the building as ancillary to the residential use of the dwelling and all new external joinery to be of timber construction.
13. Whatever the case may turn out to be in the future, I have concluded that the proposal before me should not be considered as a material change of use and its occupation for purposes not ancillary, such as a separate dwelling, would result in a material change of use and require planning permission of its own right. In terms of materials, the relevant plan clearly shows stained timber for the doors and fenestration and I have included it in the approved plans condition above. That being the case such conditions would not be necessary or relevant to the development to be permitted and would therefore fail the relevant tests within paragraph 55 of the National Planning Policy Framework ('the Framework'). I have not therefore imposed them.

Conclusion

14. The reason for refusal refers to the proposal being an unsustainable development but I have found that it would accord with the policies of an up to date development plan, when read as a whole. As such, it would be sustainable development in terms of Policy ST1 of the LP and for which paragraph 11 c) of the Framework indicates a presumption in favour.
15. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be allowed.

Richard Aston

INSPECTOR



Costs Decision

Site visit made on 2 September 2019

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2019

Costs application in relation to Appeal Ref: APP/V2255/D/19/3233959 1 Brenley Bridge Cottages, Brenley Lane, Boughton Under Bleau ME13 9LZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C Riches (c/o C Riches Properties Limited) for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for alteration to domestic garage to provide annexe to main dwelling house.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. Although the PPG states that behaviour and actions at the time of the planning application can be considered in the Inspector's consideration of whether or not costs should be awarded, it makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, during the process by which the Inspector's decision is reached.
4. I do not have the benefit of being party to the meeting of the relevant Planning Committee but I have been provided with the relevant minutes. I note that members of the Council discussed concerns over the future use of the building but the minutes are also clearly record that members were aware that they '*could only consider the application on its merits and not what may happen*' but ultimately that there would be '*demonstrable harm to the character and appearance of the countryside*'.
5. The Council's reason for refusal set out in the decision notice is complete, specific and relevant to the application, clarifying such effects on character and appearance. It also clearly states the policies of the development plan that the proposal would conflict with, which are in accordance with the most up-to-date national policy. In my experience, it is common for such resolutions made by members to be clarified and articulated by officers into a reason for refusal in order to be set out on the Council's formal decision notice. There is no substantive evidence this amounts to unreasonable behaviour. Because of the nature of the reason for refusal and the inherent level of subjectivity and site specific bespoke considerations involved, although capable of being a

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significant material consideration, the appeal decision at Ashfield Court Farm, Newington is not determinative.

6. The appellant may well consider the changes to be minor but the concerns of members are no less valid. Whilst I appreciate that the appellant does not agree with the Council's consideration and opinions relating to the effect of the proposal, the issue at the heart of the appeal involves matters of planning judgement. Notwithstanding the original positive officer recommendation, the committee was not bound to accept the advice of officers especially where an exercise of such judgement is required. That the Council refused permission on that basis contrary to an officer recommendation, does not amount to unreasonable behaviour.
7. Whilst I have formed my own view and allowed the appeal, this is based on my own observations and the evidence as put to me solely by the parties. Given their concerns and conclusions planning permission should not clearly have been granted and an appeal was inevitable.
8. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason, an award of costs is not justified.

Richard Aston

INSPECTOR