

SCHEDULE A: Applications with Recommendation

21/1137

Item No: 04

Date of Committee:

Appn Ref No:
21/1137

Applicant:
Mr & Mrs Armstrong

Parish:
Irthington

Agent:
Sam Greig Planning Ltd

Ward:
Longtown & the Border

Location: Rose Cottage, Laversdale Lane End, Irthington, Carlisle, CA6 4PS

Proposal: Change Of Use Of Self Contained Annexe To A Dwelling

Date of Receipt:
14/12/2021

Statutory Expiry Date
08/02/2022

26 Week Determination

REPORT

Case Officer: Stephen Daniel

1. Recommendation

- 1.1 It is recommended that this application is refused.

2. Main Issues

- 2.1 Whether The Proposal Would Be Acceptable In Principle

3. Application Details

The Site

- 3.1 The application site consists of an existing annexe (a two-bedroom bungalow) to Rose Cottage, a large area of hardstanding that lies adjacent to the annexe and a paddock that lies to the rear. The annexe is currently accessed via the main entrance to Rose Cottage off the A6071, through a gap in the existing fence that lies on the boundary between the annexe and dwelling. There is also another existing access that runs from the annexe to the rear of Rose Cottage and this links to the road that lies to the west of Rose Cottage which runs southwards from the A6071 to the village of Laversdale.
- 3.2 Rose Cottage, which is a large two-storey detached property, lies directly to

the north of the annexe. A large detached garage is located to the rear of Rose Cottage.

Background

- 3.3 In 2014 Planning Permission was granted for a self-contained detached annexe adjacent to Rose Cottage (Application Reference 14/0215). Two further applications were later submitted for part-retrospective revisions to the proposal (Application References 14/1065 and 15/0625). The annexe was constructed in late 2015.

- 3.4 All three of the aforementioned permissions included the same restrictive occupancy condition which stated that:

The annex hereby permitted shall not be occupied at any time other than for the purposes ancillary to the residential use of the dwellinghouse known as Rose Cottage, Laversdale Lane End. Under no circumstances shall the applicants or their successors in title subsequently sell, let or in any way dispose of or use or permit to be used any part of the accommodation hereby approved, independently of the remainder of the overall property.

Reason: The Local Planning Authority are not prepared to permit the establishment of a separate unit of accommodation on this site in accordance with Policy H1 of the Carlisle District Local Plan 2001-2016.

The Proposal

- 3.5 This proposal is seeking to change the use of the annexe into a dwelling. The paddock to the rear would be included with the dwelling. The existing access, that runs to the rear of Rose Cottage would be used to access the proposed dwelling, with the existing access via Rose Cottage from the A6071 being blocked off. A fence would be erected on the boundary between Rose Cottage and the proposed dwelling.

- 3.6 The agent has submitted the following information in support of the application:

- it is considered that the Council has not fully appreciated the size of the annexe; the scale of the curtilage in which it sits; its physical separation from the 'host' dwelling, Rose Cottage, and the absence of any demonstrable harm that would arise from its independent occupation;

- the annexe was occupied by Yvonne Armstrong's mother, however, due to ill health she became unable to occupy the annexe independently. The applicants do not have anyone else who requires the annexe. Consequently the annexe is no longer required for its intended use;

- the annexe is physically separated from the main dwelling, with all the facilities for independent living and its own domestic curtilage. It is currently accessed via the main entrance to Rose Cottage off the A6071, although there is also a secondary access to the rear of the property from the road to

the west which runs southwards from the A6071 to the village of Laversdale. It is proposed that the secondary access will form the access to the independent dwelling;

- subsequent to the Council providing its pre-application advice the Government has revised the National Planning Policy Framework (NPPF), specifically Paragraph 80 d) (formerly Paragraph 79). Paragraph 79 d) previously stated that:

“Planning policies and decisions should avoid the development of isolated homes in the countryside, unless one or more of the following circumstances apply:

d) the development would involve the subdivision of an existing residential dwelling;”

Paragraph 80 d) now states:

“Planning policies and decisions should avoid the development of isolated homes in the countryside, unless one or more of the following circumstances apply:

d) the development would involve the subdivision of an existing residential building”

The above change is a subtle but important change of emphasis to the Government's advice. The revised guidance is clear that the subdivision of a residential building to a dwelling is acceptable in policy terms. This is an important distinction to the national guidance that the Council based its previous advice on.

- under the previous version of the NPPF the reference to the specific word 'dwelling' was defined by the High Court as literally relating to the dwelling and not the planning unit (Wiltshire Council v Secretary of State for Housing, Communities and Local Government – Case No. CO/5006/2019). In concluding that Judgement and assessing the wording of the NPPF, Mrs Justice Lieven stated that *“The issue is whether “dwelling” means a single residential building, or a wider residential unit that can include secondary buildings within the same plot”* (Paragraph 26). Mrs Justice Lieven went on to clarify that *“The words “subdivision of an existing residential dwelling” tend in my view towards the dwelling being one physical building rather than a wider residential unit...”* and that *“To my mind, sub-division of a dwelling, implies a single building”* (Paragraph 27).

In light of Mrs Justice Lieven's logic and applying that logic to the revised wording of the NPPF it is clear that an exception to allowing development in the open countryside now applies to the subdivision of a 'residential building'. The definition of a residential building, not a dwelling as per the superseded version of the NPPF, should apply to the annexe in question.

- the purpose of precluding new development in the rural area is to minimise the visual impact upon the rural landscape and to prevent development in locations that are deemed to be unsustainable. When considering the above in respect of the annexe at Rose Cottage, there would be no additional visual impact as the building already exists. In terms of whether the development would represent an unsustainable form of development, it is argued that there would be no greater impact as the lawful occupation of the

annexe is, by virtue of its scale and accommodation provided therein, tantamount to a separate dwelling. Accordingly, restricting the change of use of the annexe to a dwelling is purely an academic application of the policy and no greater harm will occur if it was to be physically occupied as a separate residential unit.

- notwithstanding the change to the wording of the NPPF, whilst the Council previously perceived subdivision of the annexe to be non-compliant with their policies the following material considerations should be given significant weight when assessing the extent of any alleged non-compliance:

1. The floor plan of the annexe shows a well proportioned two bedroom dwelling with an independent kitchen, living room, bathroom, utility and also a conservatory. Its occupation requires no interconnection with the 'host' dwelling;
2. The size, design and location of the annexe, together with the size of its curtilage, was approved by the Council;
3. The annexe is not subordinate to the host dwelling. Aside from the physical size of the annexe, the curtilage of Rose Cottage is circa 1035.2 sq m and the curtilage of the annexe circa 1033.85 sq m;
4. Whilst the properties share an access from the A6071, it is proposed that should the application be successful, the secondary access will become the main access to the annexe. Once the shared access is closed off, the two properties would be entirely separate;
5. As such, the annexe can benefit from its own access, its own curtilage, and by all intents and purposes it is already a detached dwelling and can effectively be occupied independently to Rose Cottage;
6. In approving such a large, detached annexe in this location the Council have already established that the visual impact is acceptable. The separation of the annexe from the host dwelling will not result in any greater visual impact;
7. The scale of the annexe and its curtilage is such that it can be occupied by a family. Its occupation as an annexe is no different to how it would function as a separate dwelling;
8. Whilst the Council have stated verbally that an annexe is typically occupied ideally by a single, elderly person who is reliant on the host dwelling, this is a generic statement unsupported by the facts of this case. Furthermore, as evidenced by the wording of the restrictive occupancy condition, it is not an enforceable supposition and an annexe can be occupied by anyone with a tie to the occupants of the main dwelling. As such, a family could occupy the two bedroom property, generating their own journeys etc, with little (if any) reliance on Rose Cottage. In sustainability terms, its lawful occupation would have no greater impact than that which the Council are trying to avoid;
9. Taking account the above, the independent occupation of the annexe as

a separate dwelling would not result in any demonstrable harm. The relationship of the properties to one another is such that there will be no impact on the occupiers of either residence by virtue of them being occupied independently. This proposal presents an opportunity to create a new dwelling in the rural area without any adverse visual or sustainability impacts, whilst making a modest contribution to sustaining services in the rural area. This is the ultimate material consideration that justifies a departure from the Development Plan.

- as outlined above there are clear material considerations that justify the approval of this proposal. Those material considerations are unique to this application and, therefore, the support for this proposal ought not to preclude the Council resisting other applications for the conversion of annexes to dwellings where the material considerations are not so overwhelming. In essence, it goes back to the old adage of determining each application on its own merits.

- it is considered that the proposal to separate the annexe from Rose Cottage is compliant with the wording of the Government's revised NPPF. If this point was to be disputed, there will be no adverse visual impact, nor additional impact in terms of sustainability.

4. Summary of Representations

- 4.1 This application has been advertised by means of a site notice and notification letters sent to three neighbouring properties. No verbal or written representations have been made during the consultation period.

5. Summary of Consultation Responses

Irthington Parish Council: - no comments received.

6. Officer's Report

Assessment

- 6.1 Section 70(2) of the Town and Country Planning Act 1990/Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- 6.2 The relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF), the Planning Practice Guidance (PPG) and Policies SP2, SP6, HO6, IP3, 1P6 and CC5 of the Carlisle District Local Plan 2015-2030.
- 6.3 The proposal raises the following planning issues.
1. Whether The Proposal Would Be Acceptable In Principle

- 6.4 Rose Cottage and the annexe lie within the open countryside and the creation of new dwellings within the open countryside is restricted by both national and local planning policies.
- 6.5 Para 79 of the NPPF states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.
- 6.6 Para 80 (formerly para 79) of the NPPF states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
- a) there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;
 - b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;
 - c) the development would re-use redundant or disused buildings and enhance its immediate setting;
 - d) the development would involve the subdivision of an existing residential building; or
 - e) the design is of exceptional quality, in that it:
 - is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
 - would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
- 6.7 Policy HO6 (Other Housing in the Open Countryside) allows new housing in the open countryside in the following special circumstances:
- 1. where there is an essential need for a rural worker to live at or near their place of work;
 - 2. for replacement dwellings;
 - 3. for the conversion of structurally sound redundant or disused buildings.
- 6.8 Para 80(d) of the NPPF allows new dwellings in the countryside through the subdivision of an existing residential building. It is not considered that this would allow the change of use of an annexe to a dwelling. A High Court judgement in April 2020 found that a Planning Inspector erred her interpretation of the words “subdivision of an existing residential dwelling” in para 79(d) of the NPPF. She applied those words to the subdivision of the

residential planning unit where there were two separate buildings (a dwelling and an annexe) in residential use, and it was the second and separate building (the annexe) which was the subject of the application. The Council argued that in the context of para 79(d) the subdivision must be of one physical residential building and therefore the Inspector was wrong to apply the policy in the circumstances of the appeal before her.

6.9 The conclusions of the High Court Judgement are summarised below:

- The words “subdivision of an existing residential dwelling” tend in my view towards the dwelling being one physical building rather than a wider residential unit encompassing other buildings. Although it is always possible to posit clearer or different words that could have been used, if the Secretary of State had intended to encompass sub-division of the residential plot then it would have been more natural to use the words “the residential unit” or “the property”. To my mind, sub-division of a dwelling, implies a single building.

- Most importantly, in my view the context strongly militates towards a narrow interpretation. The sub-paragraphs in para 79 are exceptions to the general policy against creating new residential development in isolated rural locations. It is important to have in mind that the policy reason for not supporting new housing in such locations is that it would be fundamentally unsustainable, being poorly located for local services, and that sustainability lies at the heart of the NPPF. As such, it does in my view follow that the exceptions should be narrowly construed as being in general not supportive of sustainable development. The exceptions are all forms of development which could be said to enhance the countryside, whether by adding housing for rural workers, or reusing redundant buildings.

- As the letter from GLD dated 15 January 2020 states, para 79(d) makes sense in this context as allowing the sub-division of large properties into flats where that is a good use of the existing dwelling. To allow the sub-division of residential units by allowing separate buildings to become separate dwellings goes well beyond that limited exception.

- It is clear from Chapter 5 of the NPPF, and paras 77-79 in particular, that the general thrust of the policy to increase housing is specifically excluded when it comes to the creation of isolated homes in rural locations. Therefore, I do not think the broader policy in the NPPF is of assistance.

- Subject to there being no need for any operational development requiring permission, and there being no issue of planning conditions, then internal alterations of an outbuilding to allow ancillary residential use (i.e. not the creation of a separate residential dwelling) would not require planning permission. It follows from this that if para 79(d) supported the sub-division of a residential planning unit into two separate dwellings, then the implications could be very wide. Any residential property with a suitable outbuilding into which a residential use could be inserted would then have policy support to become a separate dwelling.

- 6.10 It is acknowledged that the wording of Para 80(d) (formerly para 79(d)) has changed since the High Court Judgement was issued. It now reads: the development would involve the subdivision of an existing residential building (it now refers to a residential building rather than a residential dwelling).
- 6.11 The agent considers that this change to the NPPF now applies to the subdivision of a 'residential building and that the definition of a residential building, not a dwelling as per the superseded version of the NPPF, should apply to the annexe in question.
- 6.12 There is, however, no evidence to back up the agent's interpretation of the revised NPPF. In the High Court judgement, Mrs Justice Lieven considered that "sub-division of a dwelling, implies a single building". The new wording of the NPPF refers to the subdivision of an existing residential building and following Mrs Justice Lieven's logic sub-division of a residential building, implies a single building. If the intention was to include annexes within this definition the NPPF would have referred to the residential unit.
- 6.13 Furthermore, Mrs Justice Lieven considered that the context of para 79 strongly militates towards a narrow interpretation. The sub-paragraphs in para 79 are exceptions to the general policy against creating new residential development in isolated rural locations. She was of the opinion that the exceptions should be narrowly construed as being in general not supportive of sustainable development.
- 6.14 Mrs Justice Lieven also considered that if para 79(d) supported the sub-division of a residential planning unit into two separate dwellings, then the implications could be very wide. Any residential property with a suitable outbuilding into which a residential use could be inserted would then have policy support to become a separate dwelling. This could lead to large numbers of new dwellings in the open countryside, which would be contrary to the general thrust of the NPPF and the adopted Local Plan, which seeks to restrict new housing in the countryside.
- 6.15 It is acknowledged that the annexe is a two bedroom dwelling, in a large plot, which could have its own access and it could be occupied independently of Rose Cottage. The building was, however, built as an annexe to Rose Cottage and is tied to that dwelling by condition. This was because a separate dwelling in this location would be contrary to national and local planning policy.
- 6.16 In April 2019, an inspector allowed a two-bedroom dwelling, which had its own garden and access and which was an independent dwelling to be retained as an annexe. (Ref 17/0857 - Farndale/ Pennine View, Sandy Lane, Broadwath). The Inspector's Decision is summarised below:

The proposal sought to retain 'Farndale' as an annexe to the new main house known as 'Pennine View. The Inspector noted that Farndale has a scale and appearance that is consistent with a 2-bedroom bungalow and benefitted from having two bedrooms, a living room, kitchen / dining room, bathroom and entrance hall. There was agreement between the main parties

that Farndale is capable of, and has the facilities required for, independent day-to-day living. However, although that may be so, a separate, independent dwelling is not what the appellant initially applied for. Rather, the proposal, expressed in the appellant's wording for a revised condition 8, quite clearly seeks to retain Farndale, not as a separate dwelling, but as a residential annex to provide ancillary accommodation to the recently built Pennine View.

However, other factors also inform an assessment of the ability, or likelihood, of a building such as the retained bungalow, being occupied as ancillary accommodation. Thus, the retained Farndale would be significantly smaller in all quantifiable aspects than Pennine View. As a consequence, the living accommodation provided within it, whilst sufficiently capable of being used as independent accommodation, would be of a different nature to, and more basic in terms of the range of accommodation and smaller in scale, than that provided within Pennine View.

I agree, as does the appellant in evidence, that Farndale is capable of occupation as an independent, self-contained dwelling. However, for the reasons I have set out above, I am satisfied that the bungalow known as 'Farndale' is also clearly capable of occupation providing living accommodation ancillary to the occupation of Pennine View. I have not been directed towards any Carlisle District Local Plan (CDLP) policies that preclude the principle of a residential annex and it seems that there is agreement between both main parties on this matter. CDLP policies HO6 and SP2 seek to resist unjustified encroachment into the open countryside and only permit housing in such locations where special circumstances exist. A condition to restrict occupancy of Farndale to an ancillary role relative to occupancy of Pennine View would secure such a relationship, avoid the creation of an additional dwelling (via retention) in an open countryside location and ensure that it is occupied as an ancillary residential annex.

- 6.17 In light of the above appeal decision, it is clear that a two-bedroom dwelling can be classed as an annexe to a larger property and this is the case in this application. It should be noted that an appeal to retain Farndale as a dwelling was dismissed by an Inspector in January 2017 (Ref 16/0196) as it would direct an approach contrary to the development plan's and the Framework's aim to avoid isolated new homes in the countryside.

Conclusion

- 6.18 Rose Cottage and the associated annexe lie within the open countryside. The proposal to change the use of the annexe to a new dwelling would be contrary to the NPPF and policies SP2 and HO6 of the Carlisle District Local Plan 2015-2030 which seek to restrict new dwellings in the open countryside unless there are special circumstances. No special circumstances have been put forward which would over ride the policy presumption against the creation of new dwellings in the open countryside and there are no material considerations that would justify approval of the application.
- 6.19 Furthermore, the granting of this permission would set a dangerous

precedent which could lead to other detached annexes that lie within the open countryside being converted into dwellings.

6.20 In light of the above, the application should be refused.

7. Planning History

- 7.1 In 2018, planning permission was granted for the change of use of part of the fencing contractors premises for use by an agricultural engineer, specialising in the repair and maintenance of all terrain vehicles, off-road utility vehicles, and amphibious off road utility vehicles, together with ancillary retail sales (18/0345)
- 7.2 In 2015 planning permission was granted for erection of a 2no.bedroom granny annexe (15/0625);
- 7.3 In 2015 planning permission was granted for change of use from agricultural land to land for external storage of materials used in conjunction with a fencing and paving business (15/0036);
- 7.4 In 2014 planning permission was granted for erection of 2no.bedroom granny annexe (revised application/part retrospective) (14/1065);
- 7.5 In 2014 planning permission was granted for erection of 2no.bedroom granny annexe (14/0215);
- 7.6 In 2013 a variation of condition application was granted for the variation of conditions 2,3,4 and 5 of previously approved permission 10/0752 to allow the kennels to be used on a commercial basis for the boarding of cats and dogs (13/0453);
- 7.7 In 2012 planning permission was granted for change of use from builders yard to enable manufacturing of fence panels, gravel boards and concrete posts, together with the use of the site as a fencing/paving contractors compound (12/0769).
- 7.8 In 2012, planning permission was granted for variation of condition 2 of previously approved application 03/0126 to remove the restriction that stipulates that the builders yard, store and office shall be used solely by Hogg and Robinson (builders) limited, together with the removal of condition 10 to enable the stables to be used for commercial use as opposed to private use only (12/0331).
- 7.9 In 2010, planning permission was granted for erection of dog breeding kennel facility for personal use (revised application) (10/0752).
- 7.10 In 2009, planning permission was granted for erection of dog breeding kennel facility for personal use (09/0869).
- 7.11 In 2003, planning permission was granted for erection of steel clad builders'

store with attached loose boxes, use of part of site as a builders' yard and conversion of part of garage into office space (03/0126).

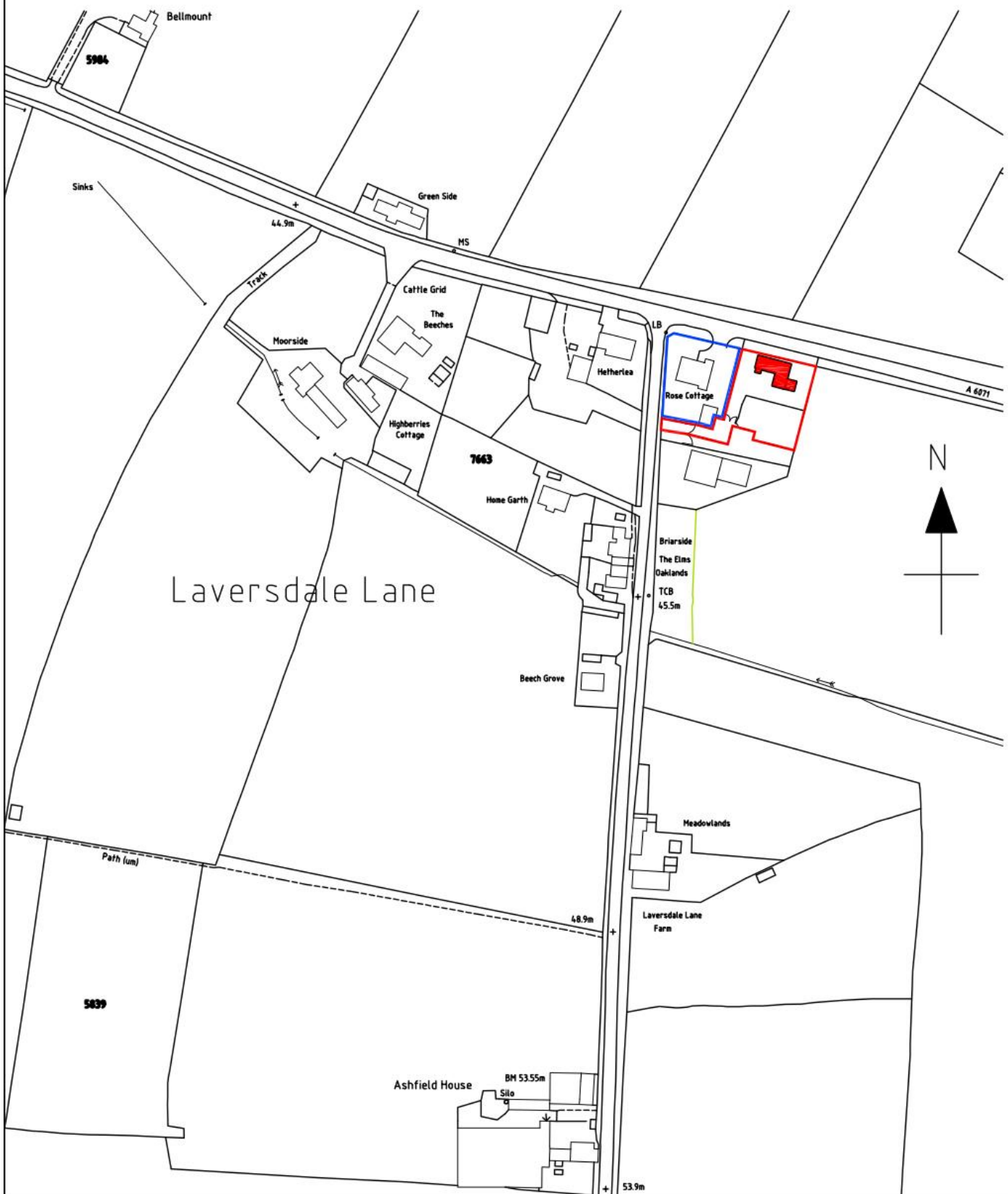
7.12 In 1997, planning permission was granted for erection of double garage (97/0480).

7.13 In 1985, planning permission was granted for erection of a replacement dwelling (85/0036).

8. Recommendation: Refuse Permission

1. **Reason:** Rose Cottage and the associated annexe lie within the open countryside. The proposal to change the use of the annexe to a new dwelling would be contrary to the NPPF and Policies SP2 (Strategic Growth and Distribution) and HO6 (Other Housing in the Open Countryside) of the Carlisle District Local Plan 2015-2030 which seek to restrict new dwellings in the open countryside unless there are special circumstances. No special circumstances have been put forward which would over ride the policy presumption against the creation of new dwellings in the open countryside. Furthermore, the granting of this permission would set a dangerous precedent which could lead to other detached annexes that lie within the open countryside being converted into dwellings.
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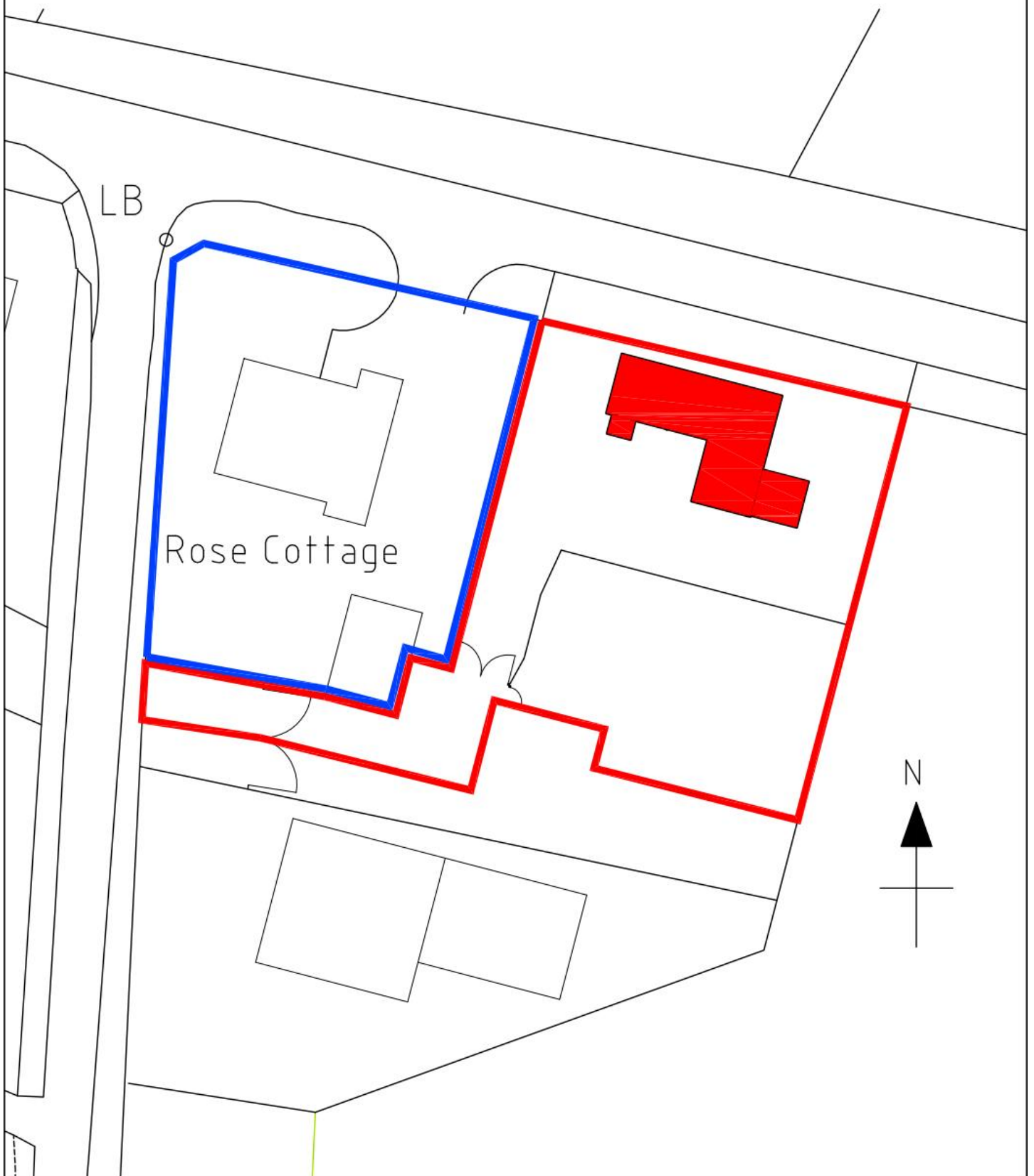
AA DESIGN SERVICES



ROSE COTTAGE, LAVERSDALE LANE END, LAVERSDALE,
CARLISLE - CHANGE OF USE OF ANNEXE TO A DWELLING
FOR MR M. ARMSTRONG
LOCATION PLAN SCALE 1:2500

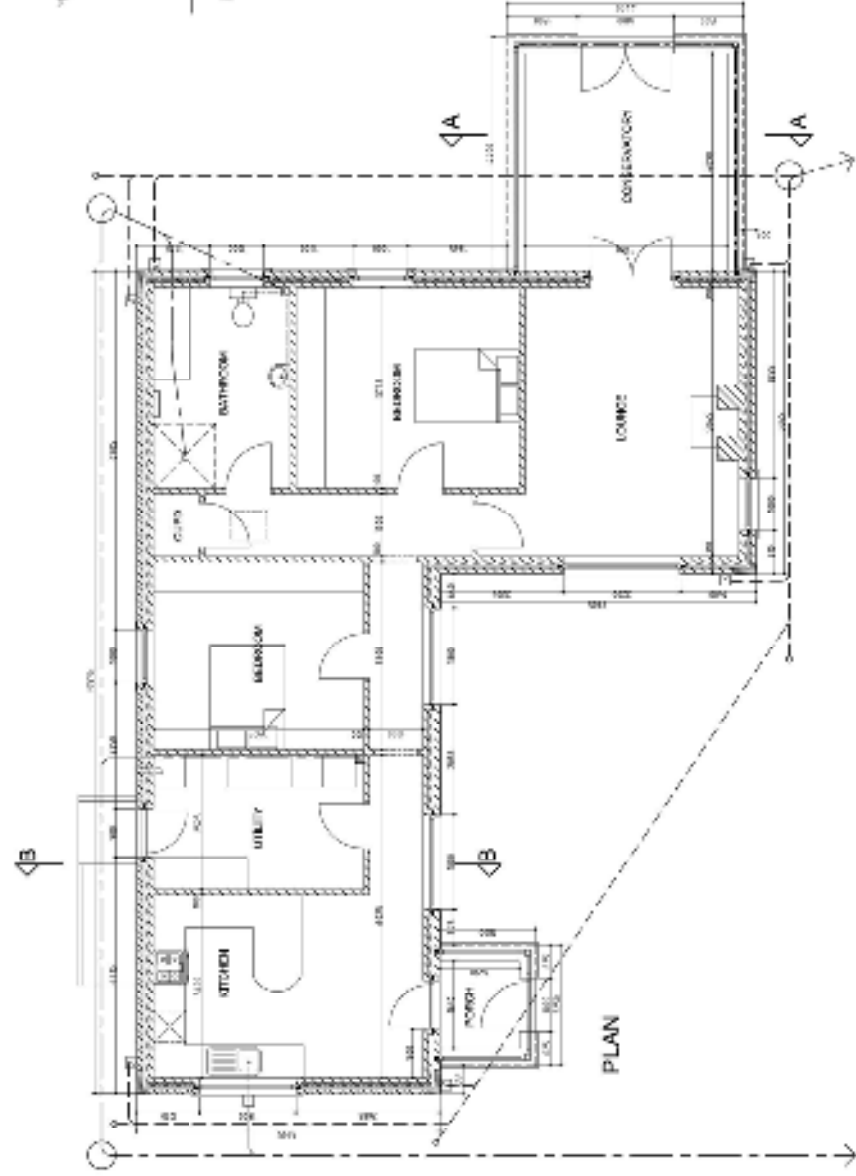
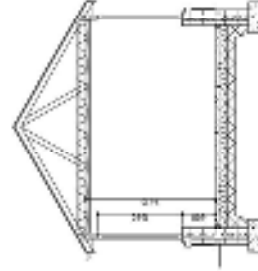
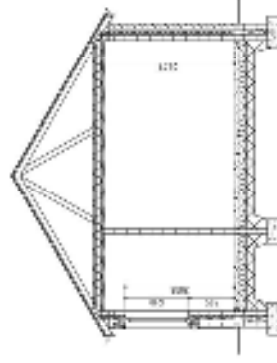
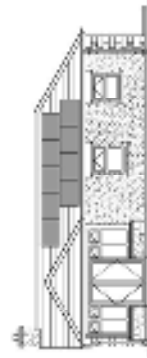
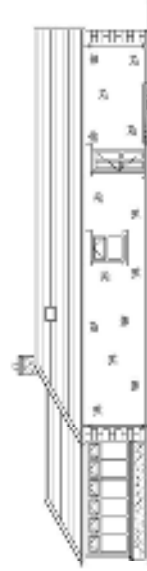
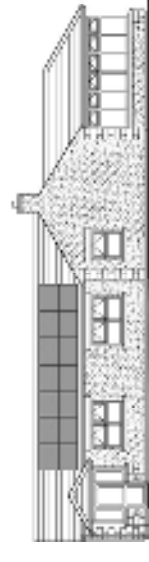
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AA DESIGN SERVICES



ROSE COTTAGE, LAVERSDALE LANE END, LAVERSDALE,
CARLISLE - CHANGE OF USE OF ANNEXE TO A DWELLING
FOR MR M. ARMSTRONG
BLOCK PLAN SCALE 1:500

DRG NO 2015/6/2/004

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