



Appeal Decision

Site visit made on 22 February 2022

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10TH March 2022

Appeal Ref: APP/K2230/D/21/3287841
130 Old Road East, Gravesend, DA12 1PF

- 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 R Thamey against the decision of Gravesend Borough Council.
 - The application Ref 20211132, dated 14 September 2021, was refused by notice dated 17 November 2021.
 - The development proposed is for the erection of an outbuilding to accommodate a games room.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The proposed outbuilding, which is attached to the existing garage, has already been constructed. Whilst not shown on the submitted drawings the land under the building has been built up to a level where the floor level of the proposed building is consistent with that of the existing garage. Also, steps have been created in the rear garden to access the building. I have taken these features into account in the determination of this appeal as they are an integral part of the proposal. However, I have not taken into account any other levels changes and associated works as they do not form part of the planning application and no details are provided.
3. Whilst the Council and residents state that an opening has been made between the existing garage and the proposed outbuilding, at the time of my site visit this opening had been blocked up. The appeal needs to be determined in accordance with the submitted plans, which show that there is no opening between the proposed building and the existing garage.

Main Issues

4. The first main issue is whether the proposal would constitute a separate unit of residential accommodation, rather than an ancillary use. The second main issue is the effect of the proposal on the character and appearance of the area. The third main issue is the effect of the proposal on the living conditions of the occupiers of the adjacent properties at 128 and 132 Old Road East (No.128 & No.132), with particular regard to visual impact and privacy.

Reasons

Use

5. The appeal dwelling and its curtilage is clearly identifiable as a single planning unit. It has enclosed gardens to the front and rear and a detached garage which is currently used in association with the host dwelling. This garage is subject to a planning condition which restricts its use to a garage for the occupiers of 130 Old Road East. No breaches of this condition have been cited.
6. The proposed outbuilding is attached to the existing garage and is sited close to the host dwelling. It comprises a main room fitted with a kitchenette area (without fitted cooking facilities), wall mounted TV and it is understood that it has an enclosed pit under the floor. Adjacent to the kitchen area is a w.c/laundry room. The main room has full height glazed doors which face directly towards the host dwelling. To the rear there is a door which provides access to the rear of the property, where the garage and rear access track are located.
7. The size of the proposed outbuilding is comparable to other outbuildings along this part of Old Road East. It is below the minimum size for a one person dwelling and has no bedroom. The appellant has indicated that the building is to be used for a games room and gymnasium with a w.c. /shower room, for purposes incidental/ancillary to the enjoyment of the host dwelling. Provided the use of the building remains incidental or ancillary to the occupation of the host property as a functionally single household, no material change of use would be involved. The property would remain a single planning unit.
8. I note the council's concern that the proposed outbuilding could be knocked through to the existing garage and potentially converted to a dwelling. The resultant building would be large enough to meet minimum dwelling space standards. However, the use of the garage is restricted by condition and the occupation of the proposed outbuilding could similarly be controlled through the imposition of a condition.
9. Having regard to the proximity of the proposed outbuilding to neighbouring properties any change of use of the proposed building into independent residential accommodation would be apparent to neighbouring residents. They would be highly likely to raise concerns if a material change of use or breach of condition occurred, which resulted in harm to the character and appearance of the locality or their living conditions.
10. In reaching this conclusion I have had regard to the appeal decisions referred to by the Council. In particular, I note that the Inspector in the St Albans decision referred to two high Court Judgements. In the earlier Court Judgement¹ the judge considered that the distinctive characteristics of a dwellinghouse is its ability to afford those who use it the facilities required for day-to-day private domestic existence. That case did not involve an ancillary/incidental building. He also commented that the use to which a building is put may be relevant but is not conclusive.
11. In the second Court Judgement² the judge considered that, even if the accommodation provided facilities for independent day-to-day living, it would

¹ Gravesham BC v SSE & O'Brien [1982] JPL 307

² Uttlesford DC v SSE & White [1992]

not necessarily become a separate planning unit from the main dwelling. With the current appeal I have found that no change of use is proposed and no new planning unit would be formed.

12. I conclude on the first main issue that the proposal does not constitute a separate unit of residential accommodation and so it is not necessary to consider whether such a use would harm the living conditions of residents associated with such a use. Accordingly, in this respect, the proposal would not conflict with CS Policy CS19 and paragraph 130 of the Framework.

Character and appearance

13. This part of Old Road East is characterised by pairs of semi-detached houses whose rear gardens step up to the northwest, slope up to the rear and vary in depth. The majority of dwellings have garages and other outbuildings located at the rear of their gardens, which back onto a vehicular access track. These outbuildings vary in size, height and depth and project into the rear garden environment. Their prominence and associated overlooking from rear windows largely depends on the depth of the rear garden concerned, the depth of the outbuilding(s) and the extent to which the outbuilding(s) are elevated above the natural ground levels.
14. The appeal property and the adjoining properties all have single storey rear extensions and outbuildings located at the end of their rear gardens. Their gardens slope up to the rear and step up to the northwest.
15. Together and amongst other things Policy CS19 of the Gravesham Local Plan Core Strategy (2014) (CS) and paragraph 130 of the National Planning Policy Framework (the Framework), require new development to be attractive, fit for purpose and locally distinctive. It should conserve and enhance the character of the local built environment and integrate well with the surrounding local area. Proposals should promote health and well-being, with a high standard of amenity for existing and future users and provide appropriate levels of private amenity space.
16. The proposed outbuilding projects further into the rear garden than the outbuildings in the adjacent gardens and is less than 10 metres from the rear extensions to both the appeal property and the adjoining dwelling at No.132. The relationship is uncharacteristically close and the outbuilding's stark dark walls and utilitarian design detract from the setting of the adjacent dwellings. The situation is exacerbated by the elevated siting of the proposed outbuilding, the front part of which sits relatively close to the top of the boundary fence between the appeal property and No.132.
17. For this reason, the appeal site appears cramped. The proposed outbuilding is unduly prominent, detracts from and is of keeping with the spacious and verdant character and appearance of the rear garden environment. This harm materially outweighs the benefits for the appellant and his family that results for the additional ancillary domestic accommodation.
18. I conclude on the second main issue that the proposal would unacceptably harm the character and appearance of the area. It would therefore conflict with CS Policy CS19 and paragraph 130 of the Framework.

Living conditions

19. Due to its combined depth and elevated position the proposed outbuilding is highly prominent and dominates the rear garden and the outlook from the rear of the dwelling at No.132. The situation is exacerbated by the alignment of the boundary between the two properties, the outbuilding's stark dark walls and its utilitarian design. Anyone standing within or exiting the proposed outbuilding would be able to see directly into the garden and rear windows of at No.132. Overall, due to its combined height, orientation and proximity the proposed outbuilding has an overbearing and oppressive visual impact on the outlook from the rear facing windows and adjacent garden area at No.132.
20. Whilst the current occupiers of No.132 may not have raised any objections to the proposal, this does not obviate its harmful impact for the current and future occupiers of the property. As stated in paragraph 134 of the Framework, development that is not well designed should be refused.
21. I am less concerned about the impact of the proposed outbuilding on the outlook from the dwellings to the northwest. This is because the proposed outbuilding has a comparable floor level to the adjacent garden area at No.128. Also, there is a tall fence between the properties, as well as a reasonable amount of soft planting, which provides screening. Beyond No.128 the gardens continue to step up.
22. Regarding surface water drainage from the roof of the proposed outbuilding and the siting of security cameras, these are matters that could be dealt with by condition.
23. I conclude on the third main issue that the proposed outbuilding materially and unacceptably harms the living conditions of the occupiers of No.132 due to its overbearing visual impact and loss of privacy. Accordingly, the proposal conflicts with CS Policy CS19 and paragraph 130 of the Framework.

Conclusion

24. Whilst I have found in favour of the appellant in relation to the first main issue and various other matters, the conclusions on the second and third main issues amount to compelling reasons for dismissing this appeal, which could not be satisfactorily addressed through the imposition of conditions.

Elizabeth Lawrence

INSPECTOR