



Delegated Report

FULL Planning Application

Planning Application No: 20230186

Location: Theos Chalk Road Higham Rochester

Description: Retrospective application for the use of an existing outbuilding as ancillary accommodation.

Applicant: Mr & Mrs R Troy, C/O Graham Simpkin Planning Ltd

Site Visit Date: Desktop Assessment

Submitted Documents/Plans

Application Form
01 Rev B – Site Location Plan
01 – Site Location Plan
02 – Existing and Proposed Block Plan
03 – Existing and Proposed Floor Plan, Elevations and Roof Plan
Planning Statement
Covering Letter

Relevant Planning History

Reference	Description	Decision	Decision Date
20070813	Erection of a conservatory at the side.	PER	27.11.2007
20030496	Rebuilding of part of the ground floor rear extension and erection of first floor rear extension to form bedroom and enlarged bedroom and erection of two storey front extension incorporating an entrance canopy to form porch with bedroom over.	PER	30.07.2003
20030137	Erection of a conservatory at the rear.	PER	20.05.2003
20020969	Retention of the two 1.47-metre-high brick piers on the front boundary.	PER	16.01.2003
19520359	Erection of bungalow	PER	11.02.1953

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 - Development & Design Principles

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards

Paragraph 33 of the NPPF (2021) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2021), the Council will also seek to replace these.

National Planning Policy Framework (2021)

- Section 2 – Achieving sustainable development
- Section 12 – Achieving well-designed places

Supplementary Planning Guidance

- SPG2 – Residential Layout Guidelines (2020).
- SPG4 – KCC Parking Standards (2006).
- Householder Extensions/Alterations Design Guide (2021)
- Technical Housing Standards – nationally described space standard (2015);
- Landscape Character Assessment (2009)

Consultations, Publicity and Representations

Consultees

Ward Councillors: No comments received.

Parish Council:

At the Planning Committee meeting of Higham Parish Council held on Monday 27th March 2023 the committee unanimously agreed to make an objection to the above planning application under the grounds that the building is unsuitable to be used as a dwelling in regard to the size within the submitted plans. The Parish Council are aware of residents in the area voicing concerns and felt that if this application is permitted it would set a precedent particularly in the change of use from a shed to a dwelling.

GBC Highways Officer:

I have no highway objections, there is adequate car parking to the front of the property. However, to comply with SPG4, a secure cycle parking space should be provided due to the extra bedroom. The use should be restricted to ancillary to the occupation of the main dwelling and should not be used for commercial purposes, as this will create its own car parking demands which would need to be considered.

Neighbouring properties

7 surrounding properties were consulted, and 2 comments, have been received from members of the public, both objections.

Summary of objections:

- Noise and Disturbance
- Loss of Privacy
- Family members have stayed in the building for longer period than described in the supporting

information.

- The statement that the use has likely continued for more than 10 years is incorrect. The previously owners began to use the outbuilding as separate accommodation during the building works on the main house.
- The additions to the outbuilding are not part of the original building.
- Compliance with building regulations necessary
- The northeast opening has not been boarded up.
- Shared services with main property does not prevent future, separate use.
- Differences in ground levels result in the existing building being of higher prominence and imposing appearance in neighbouring gardens.

Officer Note: Please note that building regulations are not a material planning consideration and are dealt with by building control departments. An informative will be included where approved, advising the applicants to ensure that they have relevant building control consents.

Officer's Analysis

Site Description

The outbuilding to which this application relates, appears on the historic maps in 2003 and appears to have been extended between 2013 and 2014 making it an 'L' shaped building. No planning permission was obtained for either the erection of this building or its extension. The details supplied show that the building currently has a bedroom, bathroom facilities, kitchen facilities and living room space, with garden storage attached.

Proposal

The proposal is a retrospective application which seeks to bring into compliance the ancillary use of the existing outbuilding. No external elevations are proposed. It is noted the existing opening on the North East Elevation is internally boarded up.

Class E, Part 1, Schedule 2 of the General Permitted Development Order 2015 applied permitted development rights for building incidental to the enjoyment of the dwellinghouse. Given that the original use of the building is unknown, it may be that the building would have complied with the 1995 legislation (Which had similar legislation) when originally built in 2003 where its use was incidental.

A building incidental to the use of the main dwellinghouse would not be entirely independent of the original dwellinghouse. Given that all living facilities are currently provided within the building it is no longer considered to be an incidental building and is being used as an independent ancillary building for which planning permission would be required.

It is noted that the applicants have owned the property for approximately 3 years and so the planning agent indicates in the statements provided alongside this application that they believe the use of the building as ancillary has been in place in excess of 4 years (relative to The Planning and Compensation Act 1991) but cannot produce sufficient evidence of this. However, it is noted that the neighbour comments references previous owner use of the site as separate unit of accommodation during building works on the main dwellinghouse. It is noted that the most recent planning consents were in 2007 and 2003 on this property. This comment does provide some evidence that the building may have been used for more than 4 years as a separate use of accommodation and may not require any further consent. Nevertheless, this application type does not deal with the existing Lawfulness of the existing building, but it is in any case noted.

Principle of Development

The planning position relating to the provision of buildings or structures for annexes or the conversion of buildings for use as annexes (sometimes termed 'granny annexes') or other ancillary accommodation is quite complex and sometimes contradictory and there is case law, in relation to such development, which

can itself be open to interpretation.

Existing residential properties enjoy permitted development rights which allow certain building works, such as extensions or outbuildings to be carried out without having to make a planning application. Permitted development rights are set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As aforementioned, this outbuilding was built in 2003 and later extended, none of those works have planning consent. Permitted Development Rights under Class E, part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), apply to buildings which are incidental to the enjoyment of the main dwelling. Therefore, without adequate evidence that the ancillary use has been in place for 4 years or longer, the ancillary use requires planning consent.

There is no specific local or national planning policy that directly relates to the provision of new, or use of existing buildings, as annexes. However, there are emerging policies in the Regulation 18 (Stage 2) Development Management Policies Document (2020), including RES 3: Residential Annexes, that show the direction of travel the Council is going and such emerging policies may be accorded some limited weight.

By way of general guidance, a proposed annex should (where possible):

- Be subordinate to, and used in connection with, the main dwelling and must not be able to function without the main dwelling (for example, not having separate kitchen facilities).
- Be interconnecting with the main dwelling as a whole (for instance via doorways); if accessed by a separate external entrance this should not separate from the main dwelling and therefore should rely on a common shared access with the main dwelling.
- Be within the curtilage of the main dwelling.
- Have a functional connection with the main dwelling (e.g. the occupant should be a dependant relative of the residents of the main dwelling or employed at the main dwelling).
- Be in the same ownership as the main dwelling.
- Be designed in such a way as to easily allow the annex to be used at a later date as an integral part of the main dwelling.
- Have no boundary demarcation or subdivision of the garden areas between the curtilage of the main dwelling and the annex.
- Have adequate parking and amenity facilities for the needs of the annex occupants and the residents of the main dwelling.
- Comply with the Council's normal standards for extensions to a dwelling including those relating to design and the amenities of neighbouring occupiers.

****Note:** The above is largely reflected in emerging policy RES3: Residential Annexes Regulation 18 (Stage 2) Development Management Policies Document (2020).

A key consideration in this application is whether the site will continue to operate as a single planning unit or whether there will be two households living independently of each other on the site.

The annex as existing could function as a separate single dwellinghouse, in that it contains all the necessary living facility to be independent to the main dwellinghouse, including bathroom and kitchen facilities. It is noted that Theos has a large front drive which is capable of providing shared parking provision for both the existing dwellinghouse and the ancillary outbuilding accommodating a single bedroom. Whilst there is no vehicular access directly to the ancillary outbuilding, there is clear pedestrian access via the side gate and through the rear garden. Given the angular nature of the plot, there is limited possibility that vehicular access could be made possible in the future given the side spacing to the dwellinghouse. Therefore, this application for change of use of the outbuilding into an annex will change the operation of the dwelling from a single planning unit into two independent households on one site.

However, identifying a separate planning unit requires consideration of a range of factors and not simply if a unit of accommodation is self-contained but is a matter of fact and degree. 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 a matter of fact and degree whether a change of use has occurred.

Case Law

The use of an existing outbuilding for ancillary residential accommodation in association with a main dwellinghouse does not require planning permission provided it complies with Sec. 55(2)(d) of the 1990 Act that provides that the use of buildings within the curtilage of a dwellinghouse for any purpose “incidental to the enjoyment” of that dwellinghouse is not development. The position with regard to residential use of a new outbuilding is different.

A number of cases, detailed below, have shown that for the purposes of Sec. 55(2)(d) “incidental to the enjoyment” may be interpreted generously. The creation of an annexe from an existing outbuilding would therefore be unlikely to require permission provided the building was occupied by a family member. However, the situation is not as clear where the occupant is someone who is not a member of the family but has a strong functional connection with the main dwelling, for example, a housekeeper or handyman.

If the accommodation created constitutes a separate planning unit, this then is not an incidental use, as Sec. 55(3)(a) makes clear. Any separate residential occupation of a building or buildings formerly within an existing single residential planning unit is development by virtue of Sec. 55(3)(a) of the 1990 Act, as confirmed by *Wakelin v SoS* 1978, a case in which a large house with a lodge that had been converted into two flats used as guest suites was proposed to be converted into a separate dwelling and sold off. The court held that the house, lodge and grounds were one planning unit and that to sever the lodge would constitute a material change of use.

In essence, an annexe will become a separate single dwellinghouse where it is self-contained with all the necessary day-to-day living facilities and has resulted in the creation of a separate planning unit. *Uttlesford DC v SoS and White* 1992, in which a garage attached to a dwelling had been converted to a ‘granny annexe’, provides leading case law on the matter. In *Uttlesford* an Inspector had determined that where a domestic garage within a residential curtilage was used for living accommodation in connection with the dwelling, no material change of use occurred. The court agreed, ruling that the fact that the elderly occupier of the annexe had all the living facilities that enabled her to live independently from the rest of the family did not amount to the creation of a separate planning unit that required permission. The significance of this case is that the even though the accommodation in the garage was capable of independent use, the court judgment suggested that a quality of separateness was occupation by someone who was not connected with the family occupation of the whole planning unit.

Identifying a separate planning unit requires consideration of a range of factors and not simply the self-containment of the accommodation and is a matter of fact and degree. In her decision to grant permission for the conversion and extension of an outbuilding at a house in the Essex green belt to a residential annexe, notwithstanding the Council’s concern that it would result in the creation of an independent residential unit, the Inspector in *Castle Point* 27/11/2020 DCS No 400-028-727 relied on the *Uttlesford* judgment. The Council had reached its own view that the proposal was tantamount to a new dwelling with reference to *Gravesham BC v SSE* 1984 because the accommodation provided all the facilities for independent day-to-day living. The Inspector, however, followed the more recent and relevant case law in *Uttlesford*, stating 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 and it was a matter of fact and degree whether a change of use had occurred.

In the case before her, the Inspector recorded that whilst the extension and conversion of the outbuilding would provide all the facilities for day-to-day living, it would function as an annexe, with the primary occupants also sharing living space, eating and socialising with the rest of their family in the main dwelling. There was a paved footpath between the annexe and the main house allowing easy access between the two. As such, she held that the garage conversion would remain part of the same planning unit as the main dwelling. Based upon the evidence before her the inspector was satisfied that the proposal related to an annexe. She allowed the appeal subject to a condition that it should not be severed from the main house by reason of being sold or let as a separate unit of accommodation.

In reaching her decision, the Inspector noted that reference had also been made to Carter v South Bucks DC 2011 but considered that case was different in that a garage had been converted into a three-bedroomed property with a substantial conservatory extension. It had its own garden, separated from the main dwelling by fencing, trees and shrubs, with no footpath linking the two buildings. Whilst family meals were taken together that was in the substantial garage conversion rather than in the host dwelling. As a matter of fact and degree in that case it was found that a new planning unit had been created.

In this case, whilst the proposed annexe would be capable of being occupied independently, there is a close relationship between the buildings and there are clear shared landscaping elements between the two, without division. The size of the accommodation would also be very modest and would not adequately serve as a separate self-contained unit of accommodation. Furthermore, it has been made clear that the annexe is for the sole use of family members, in the supporting information submitted with this application.

It is on this basis and in considering the above case law, as a matter of fact and degree, a new planning unit would not be created at the application site, and the proposal would therefore comply with saved Policy C13 of the Local Plan First Review (LPFR) (1994), Policy CS02 of Gravesham's Local Plan Core Strategy (LPCS) (2014) and paragraphs 149 and 150 of the NPPF 2021.

Nevertheless, given the concern relating to the potential for plot severance, it will be essential to impose a condition restricting the use of the annexe as ancillary and related to the main dwelling, and when it is no longer required for such a use, to return to its former use.

Design, Character and Appearance

No changes are proposed to the scale, design, location or other outward appearance of the dwellinghouse than exists.

The proposed development would comply with the requirements of Policy CS19 of the Core Strategy 2014 and paragraph 130 of the NPPF (2021) in terms of design, character and appearance.

Amenity of Future Occupiers

The Nationally Described Space Standards (2015) requires an internal floor area of 37m² for a single bedroom, single storey dwellinghouse (with a shower room instead of a bathroom). The internal floor area on this dwellinghouse is 32.43m² and falls below the requirement. Therefore, the annexe is a cramped form of development which fails to provide good quality amenity for future occupiers.

Further to the minimum floor area requirements set out in the Nationally Described Space Standards (2015), the Residential Layout Guidelines (RLG) breaks down the measurements further, recommending minimum floor areas for specific rooms as shown in the table below. These recommended minimum floor areas have been compared to the proposed room sizes within the property for comparison.

Room Type	RLG Minimum Floor Area (m ²)	Existing Space in Annexe (m ²)
Living Room	13.2	14
Kitchen	7.2	5
Single Bedroom	6.5	7
Shower/WC	3.6	3

The table above demonstrates that the rooms within the annexe accord with the recommendations set out within the RLG, with the exception of the kitchen area which falls short. Nevertheless, the use of the whole ground floor of the annexe as a 'living room is likely to be more than solely living room, with its open plan nature with the kitchen.

In terms of amenity space, the annexe is be provided access to the rear garden of the main dwelling, which provides a sufficient level of external space.

The RLG states that a lounge/kitchen should have a minimum floor area of 18m², and therefore this space is in accordance with the guidance.

The annexe will be occupied by relatives of the main dwelling, and conditions will be attached to ensure that access and routes are maintained between the annexe and amenity space of the main dwelling. As such, the annexe is considered to safeguard the amenity of future occupiers and is in accordance with Policy CS19 (LPCS) and Section 12 (NPPF).

Neighbouring Amenity

The proposed development would not seek to alter the existing building externally and would be maintained in situ. The northeast opening is a high-level window, 1.6 metres from floor height. It has been internally blocked up, but this offers little in terms of permanence and could at any time be reversed. However, given its nature as a high-level window at single storey level, it would not result in any direct overlooking. Boundary fencing up to a height of 1.8 metres is allowed under permitted development rights and this option is available to neighbours should they feel further obscuration is necessary. No changes to the building itself are intended and so the consideration here should be whether the use as an ancillary annexe as opposed to an incidental building result in greater impacts to the neighbouring properties.

One concern raised was regarding noise. There is expected to be some level of noise experienced between neighbours. Given that the building can be used incidentally, to the main dwellinghouse, which can provide an array of noise (i.e. use as a music studio and other artistic endeavours, additional living space, games room etc...), it is not considered that the use of a kitchen and bathroom facilities (Which make this building independent from the main dwellinghouse), would substantially increase the level of noise from any potential incidental use which it could have without consent being necessary.

No changes in the structure are proposed and so although the neighbours' concerns regarding the design and prominence of the building are noted, this is not changed by this application for ancillary use of the existing building.

The proposed ancillary use of the existing outbuilding is therefore considered to safeguard the amenity of neighbouring properties in compliance with policy CS19 of the Core Strategy 2014.

Parking

Sufficient parking provision is available. The GBC Highways Officer noted an additional cycle space should be provided. However, the front drive is a secure area with a large space and there is sufficient space in the attached garden storage to store a cycle.

Adequate vehicle and cycle parking provision is therefore available in accordance with paragraphs 110 to 113 of the National Planning Policy Framework (2021), Saved Policies T1 and P3 of the Local Plan First Review (1994) and Policies CS11 and CS19 of the Core Strategy 2014 subject to further details of cycle parking provision.

Conclusion & Recommendation

The proposed continued use of this building as an ancillary annexe would comply with all relevant national and local planning policies.

The recommendation is to approve.

Should the nature of the use of the building change, further consent may be necessary as it could no longer be considered an ancillary annexe and instead be considered an ancillary, separate dwellinghouse.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Ms Lisa Williams	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	2nd May 2023	Dated:	3rd May 2023