
Appeal Decisions

Site visit made on 11 May 2017

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 June 2017

Appeal A: APP/P3610/C/16/3161004

Appeal B: APP/P3610/C/16/3164450

Land at 49 Lower Hill Road, Epsom, Surrey KT19 8LS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr R Birch and Mrs L Birch against an enforcement notice issued by Epsom and Ewell Borough Council.
- The notice was issued on 17 August 2016.
- The breach of planning control as alleged in the notice is the use of the garden cabin located in the rear garden of the Land as a separate dwelling. The cabin is outlined in blue on the attached plan.
- The requirement of the notice is: cease the use of the garden cabin as a separate dwelling and remove all bedroom furniture, all kitchen fixtures, fittings and equipment.
- The period for compliance with the requirement is 20 weeks after this notice takes effect.
- Appeal A is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Summary of Decisions: Appeal A is dismissed and the enforcement notice upheld. No further action is taken on Appeal B.

Appeal C: APP/P3610/W/16/3157541

49 Lower Hill Road, Epsom, Surrey KT19 8LS

- 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 and Mrs R Birch against the decision of Epsom and Ewell Borough Council.
- The application Ref 15/01776/COU, dated 7 March 2016, was refused by notice dated 6 June 2016.
- The development proposed is change of use of existing garden cabin outbuilding to a self-contained granny annex.

Summary of Decision: The appeal is dismissed.

Appeal A: ground (a) and the deemed planning application and Appeal C (s78 appeal)

Main issues.

1. The application subject to the s78 appeal is for the development already carried out as alleged in the enforcement notice. The main issues are:
 - a. The effect of the development on the character and appearance of the area;
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- b. The effect on living conditions of occupiers of neighbouring properties; and
- c. Whether the development is acceptable, being within a flood zone.

Character and appearance

- 2. The cabin is constructed mainly of timber and is sited at the end of a rear garden of some 50m in depth, in the plot belonging to No 49, a detached bungalow on the east side of Lower Hill Road. The land falls to the rear of the property where the Green Lanes watercourse runs along the boundary. Similar one or two-storey dwellings with large gardens are adjacent to the appeal site.
- 3. Within garden areas in the immediate vicinity there is a range of outbuildings and structures. Of the larger outbuildings nearby, photographs show that a few bear some similarities in appearance with the appeal building, but no details are provided as to their planning status or use. Generally the outbuildings are either of more modest proportions or recognisably part of the domestic function of the main dwelling to which they belong, thus contributing positively to the character and appearance of the area.
- 4. Permitted development rights to provide an outbuilding in the curtilage of a dwelling do not extend to the creation of a separate planning unit within the plot to create an independent dwellinghouse on the land.
- 5. The appellant refers to the case of *Uttlesford DC v SSE & White* [1992] JPL 171 where it was held 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. In that case a self-contained unit was intended to be an annexe only with the occupier sharing her living activity in company with the family in the main dwelling. Such accommodation is not necessarily a separate planning unit from the main house and a fact and degree judgment is to be made in the circumstances of the case.
- 6. The cabin has a rectangular footprint of about 13.8m deep with a main element about 4.5m wide and a projecting bay of some 6.8m wide. It is single-storey with a tiled dual-pitched roof and eaves height of about 2.18m and ridge height of 3.5m. Internally there is a living/dining room, kitchen, bathroom, study and a bedroom. There is a wood burner in the living room, served by a steel chimney flue which is a prominent feature of the roof. In appearance the building has an imposing presence, notwithstanding its single storey and being painted in a recessive green colour. It takes up a significant proportion of the rear garden. The open character of the garden, despite its overall size, has been undermined by the introduction of a separate dwelling in this location which is at odds with the ancillary function of the grounds of the main house.
- 7. Utilities are connected to the main house and there is no separate access, or delineated curtilage. However the use of a hard surface in front of the entrance and the patio doors clearly fulfils a curtilage function around which some items of domestic paraphernalia are sited. The building is located at a significant distance from the main dwelling in a secluded area surrounded by substantial vegetated boundaries to three sides.
- 8. The level of facilities provided within the cabin and its overall size are not what would be expected for a building whose accommodation is intended to be ancillary to its host which in this case is a fairly modestly-sized bungalow. I note the absence of a bath but this is not regarded as an essential addition to

the requirements for day-to-day living where a shower has been installed. In addition, although the appellants' adult son and his partner occupy the cabin, and clearly avail themselves of some facilities in the main house such as a laundry and gym, there is no detailed information about when or how the family socialise or interact as a single household. Whilst there may be socialising taking place among family members, the evidence relating to interdependence as between occupants of the respective units is slight.

9. The personal statement of the appellants has been considered. Although clearly there are advantages in having relatives live close by, including when, as it is envisaged, they might start a family, there is nothing in the statement that persuades me that there is a strong personal need for them to occupy the cabin, or indeed that other options to rearrange or extend accommodation within the main dwelling have been fully explored.
10. Taking account of all that I have seen and read, as a matter of fact and degree the cabin is in my opinion clearly in use as a detached dwelling in a separate planning unit that is intended for residential use independently from the main house at No 49.
11. Where good planning reasons are advanced against the creation of an additional dwelling, it may be appropriate to impose a planning condition that the building permitted shall be used solely as accommodation ancillary to the main dwelling house. I would have reservations about the enforceability of such a condition but in any event the cabin's size, location and appearance has adversely affected the established pattern of development of dwellings with long rear plots that have open gardens and smaller scale domestic paraphernalia. A condition of the type suggested would not overcome these objections to the development.
12. To conclude on this issue the cabin is used as a separate dwelling comprising a substantial free-standing building in its own right. Its appearance in the rear garden is incongruous, having regard to the generally open character of the rear gardens of surrounding properties. Its continued use as such would significantly undermine the character and appearance of the area contrary to Policies DM10 and DM16 of the Epsom and Ewell Development Management Policies Document 2015 (DMP). These policies include among their aims that development respects local character and distinctiveness, whilst protecting the character of rear garden land forming part of a larger swathe of green infrastructure.

Living conditions

13. The issue here is the extent to which, if at all, the residential use of the cabin has resulted in loss of privacy or noise and disturbance, including light pollution to occupants of Nos 47 and 51.
14. Whilst I note the concerns of the neighbouring occupants, I agree with the Council that in view of the intervening boundaries which afford some screening and the separation distances to the main elevations of those properties, there would be no unacceptable impact in terms of loss of privacy. A condition could ensure that relevant windows within the building were obscurely glazed to protect the privacy of adjoining occupiers where appropriate.

15. The appellant has produced photographs showing the cabin at night, with and without its internal and external lighting. The effects of the lighting, although a concern could be mitigated by conditions that controlled its operation, but there is a more general concern at the level of noise and disturbance that a separate residential use would be likely to generate.
16. In this connection I disagree that the noise from the use is equivalent to that typically experienced from incidental uses, for example as a study or workshop. Residential occupation is continuous and associated activity is multifarious. This can give rise to more irregular and sudden noises than from a dedicated incidental use of a garden shed. The general activity and disturbance from a separate dwelling would be alien to the acoustic environment encountered at the bottom of a secluded garden immediately adjacent to similar areas.
17. It would be unreasonable and impracticable to attempt to impose on residents of the cabin, restrictions on activities normally associated with everyday residential living. Consequently I am not satisfied that the development would adequately protect the living conditions of adjacent neighbours in terms of noise and disturbance likely to arise therefrom.
18. On this issue therefore, I find that the occupation of the cabin for residential purposes within the plot would be likely to have a materially harmful impact on residents of adjacent properties in terms of noise and disturbance. The harm would be contrary to DM Policy DM10 which aims to ensure development protects neighbours from unacceptable noise and disturbance.

Flood risk

19. Planning Practice Guidance advises that development proposals are mindful of the risk of flooding. The cabin falls within Flood Zone 3 as having a high probability of flooding but it is not supported by a Flood Risk Assessment (FRA) as advised in Paragraph 103 of the National Planning Policy Framework (Framework). The Council refers to several policies but the only one said to be specifically breached is DMP Policy DM19. This requires, among other matters that it can be demonstrated through an FRA that the development would, where practicable, reduce flood risk both to and from the development or at least be risk neutral.
20. The Environment Agency was consulted with regard to the construction of the log cabin. On 27 February 2015 consent was given to a "Rainwater discharge via a 150mm outfall to the Green Lane Stream from a new detached log cabin to rear of the garden". It is however unclear whether the Environment Agency considered the development as a residential dwelling or simply as an outbuilding used for purposes incidental to the main house. Dwellings are more vulnerable to flood risk, as set out in the Planning Practice Guidance.¹
21. In any event, whilst the discharge arrangements are beneficial, there is no site-specific flood risk assessment that demonstrates that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and that will, where possible reduce flood risk overall. This is a critical component of the advice contained in the Framework at Paragraph 102.

¹ Paragraph: 066 Reference ID: 7-066-20140306

22. In these circumstances I cannot be confident that the development is risk neutral and conclude that the lack of a FRA is sufficient on its own to lead to dismissal of the appeal as contrary to DMP Policy DM19 and the Framework.

Other matters

23. The development has some social, economic and environmental benefits in that it provides extra affordable accommodation to the mutual advantage of the appellants and their wider family. As set out in Paragraph 58 of the Framework the development seeks to optimise the potential of the site to accommodate development but for the reasons given above its design and location fail to reflect the identity of its local surroundings.
24. The cabin is constructed of sustainable materials with eco-friendly elements that are energy efficient. I also recognise the support given nationally to enable older people to remain economically active, involved with their families, and able to choose where and how they live. These and the other benefits referred to carry some weight, however taken either individually or cumulatively, they are insufficient in my view to outweigh the conclusions reached on the main issues.
25. It is also said that the development bolsters the construction industry but this should not be given weight if as is claimed, the cabin was initially provided in compliance with the permitted development legislation as a separate exercise from a subsequent change of use for primary residential purposes, which is the basis on which permission is now sought. Although I find the appellant's evidence to be somewhat ambivalent in this respect², the Council accepts that the scope of the enforcement notice does not extend to the erection of the building itself.

Conclusions on Appeal A (ground (a)) and Appeal C (s78 appeal)

26. For the reasons given above and taking into account all other matters raised the s174 appeal fails on ground (a) and planning permission will be refused on the deemed application. The s78 appeal does not succeed.

Formal Decisions

27. Appeal A is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended. No further action is taken on Appeal B.
28. Appeal C is dismissed.

Grahame Kean

INSPECTOR

² The appeal statement states "As the project developed and the cabin was erected it made more sense initially for our son and his girlfriend to take up occupancy of the cabin especially when the bungalow was being redeveloped".