



Appeal Decision

Site visit made on 2 September 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2019

Appeal Ref: APP/A3655/D/19/3232880

Cherry Lodge, Oakcroft Road, West Byfleet, Surrey KT14 6JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Free against the decision of Woking Borough Council.
 - The application Ref PLAN/2019/0114, dated 29 January 2019, was refused by notice dated 26 April 2019.
 - The application sought planning permission for proposed rear extension on existing garage and proposed conversion of existing garage into residential annexe for disabled use and construction of new attached garage (amended description) without complying with a condition attached to planning permission Ref PLAN/2015/1284, dated 1 February 2016.
 - The condition in dispute is No 4 which states that: The annexe hereby approved shall be occupied only as residential accommodation ancillary and incidental to the use of the dwelling currently known as 'Cherry Lodge' and shall not be used as an independent residential unit unless otherwise agreed in writing by the Local Planning Authority.
 - The reasons given for the condition is: To ensure that the dwelling remains in single family occupation.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr David Free against Woking Borough Council. That application is the subject of a separate Decision.

Procedural Matter

3. There is some contention surrounding the amended description of proposed development as set out in the banner heading above. The appellant indicates that the original description of the development proposed on the original planning application form sought planning permission for "*Conversion of existing garage into residential annexe and construction of new garage*". It is said that it was not stated that the sole reason for the annexe was for use by a disabled family member. However, the planning application that is now the subject of this appeal concerns itself with the variation of condition 4 and that is what is before me for consideration.

Background and Main Issues

4. At my visit I was able to visit an annexe detached from the main dwellinghouse that contained a combined kitchen and living space, bedroom, bathroom and store. The appellant has advised that whilst the annexe was originally intended to be occupied by ageing relatives, due to changes in family circumstances, this may not take place. As an alternative the appellant advises that it could be used to provide a residential unit for short term lets.
5. The main issues raised in respect of the appeal are: -
 - (a) Whether the proposal would create a separate independent dwellinghouse;
 - (b) The effect of the proposed development on the character of the area; and
 - (c) The effect of the proposed development on habitat and biodiversity at the Thames Basin Heaths Special Protection Area (SPA).

Reasons

Separate independent dwellinghouse

6. The appellant's case makes it clear that the appellant wishes to rent out the annexe to a non-family member(s). Whilst the appellant says the annexe would not have its own independent address, front door, garden, electricity or water supply, it is clear to me that the accommodation can function as a self-contained residential unit, despite being accessed via a side alley between the it and the main dwellinghouse. If the annexe with its living accommodation was part of the same planning unit as the dwellinghouse and provided that the unit remained in single family occupations and continued to function as a single household, no material change of use would be involved. That is not the case here as the appellant wishes to rent out the annexe to a non-family member(s). The living accommodation would not remain part of the single family occupation and, therefore, it would not continue to function as part of the single household at Cherry Lodge. As such, an independent unit would be created and this would be contrary to the description of the development that was applied for and given planning permission.
7. I have been directed to an appeal decision at Hoveⁱ and reference has been made to 'the Benson case' but I have not been provided with the details of those cases that would enable me to fully assess the similarity of those proposals to the one before me. However, having considered the circumstances of the case before me, it appears to me that without Condition 4 it would be difficult to prevent separate independent occupation of the annexe.
8. The appellant puts forward a suggestion to vary the wording of Condition 4 to allow the appellant to rent the annexe to a non-disabled, non-family member lodger and asserts that this would still restrict any action of subdividing the annexe into a separate dwellinghouse and would be enforceable and sufficient to keep the whole residential unit as one.
9. I do not consider the suggested variation to the wording of condition 4 put forward by the appellant would serve to prevent the use of the annexe as a separate dwellinghouse as it would not prevent non-family members occupying

the unit. As such, I also do not consider the proposed condition would be enforceable for this reason.

10. In considering the appropriateness of conditions, whether that of the existing condition or that suggested by the appellant, I have had regard to the Newburyⁱⁱ, British Airports Authorityⁱⁱⁱ and Coventry City Council^{iv} cases.
11. I have also been referred to a court judgement^v by the appellant, however that case appears to me to have related to three floors within the same property, which is not the case here. I, therefore, can and should consider the proposal before me on its individual merit.

Character of the area

12. The area is characterised by large detached dwellings set within generous sized plots. The properties have a set back position from the highway and host large rear gardens.
13. In contrast, the proposed dwelling is of substantially smaller size than that of the existing properties in the area and does not have any outdoor space associated with the unit that could provide parking and outdoor amenity space. Furthermore, it is positioned behind the garage and between the existing dwelling and the side boundary and has a cramped location within surrounding existing development. The overall small size of the residential unit, its contrived positioning and form without independent outdoor space would not reflect the prevailing pattern of development in the area and therefore it would be substantially out of keeping with the area's character.
14. For this reason, an independent dwelling in the proposed location would be harmful to the character of the area. The proposal would, therefore, conflict with Policies CS10, CS11, CS12, CS21 of the Woking Core Strategy (2012), Policies DM9 and DM10 of the Development Management Policies Development Plan Document (2016), Policies BE1 and BE3 of the Pyrford Neighbourhood Plan 2016 – 2017, and Supplementary Planning Documents (SPDs) 'Design' (2015), 'Outlook, Amenity, Privacy and Daylight' (2008) and 'Parking Standards' (2018). The Policies and SPDs seek, amongst other matters, new development to respect and make a positive contribution to the character of the area in which they are situated, paying regard to the scale, height, proportions, building lines, layout, materials and other characteristics of adjoining buildings and land.

Thames Basin Heaths SPA

15. The site lies beyond a 400m threshold but within 5 kilometres of the Thames Basin Heaths SPA where it is identified that an appropriate contribution is required towards the provision of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) to avoid impacts of residential development upon the SPA. Whilst it does not appear that the appellant disputes the need to secure appropriate mitigation, I have not been provided with a completed Section 106 planning obligation that might provide a financial contribution toward mitigation. Nonetheless, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.

Other Matters

16. Concern has been expressed about the Council's consideration of the planning application in terms of whether or not it was considered as a full planning application or an application against a specific condition imposed upon a full planning permission. From the information before me, including the 'proposal' wording used by the local planning authority on its decision notice, I have no substantive reason to conclude that the Council considered the proposal otherwise than as a proposal to remove or vary Condition 4.
17. I have been referred to correspondence between the Council and the appellant. Whilst the correspondence relates to the annexe, I have considered this appeal on its own merits.

Conclusion

18. Having regard to the above findings and to prevent the use of the annexe as a separate independent residential dwellinghouse and to protect the character of the area I, therefore, consider condition 4 to be necessary. The appeal should be dismissed, and the condition retained in its present form.

Nicola Davies

INSPECTOR

ⁱ APP/Q1445/W/18/3194772 – 6 Fallowfield Crescent, Hove BN3 7NQ

ⁱⁱ Newbury District Council v Secretary of State for the Environment [1982] AC 578

ⁱⁱⁱ British Airports Authority v Secretary of State for Scotland [1979] SC 200

^{iv} R v Coventry City Council, ex p Arrowcroft Group plc [2001] PLCR 113

^v Ealing Corporation v Ryan [1962] 2 QB 486