



Appeal Decision

Site visit made on 26 November 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

Appeal Ref: APP/K2230/W/19/3233847

79 Dream Valley, Rhododendron Avenue, Culverstone, Meopham DA13 0TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs C Allum against the decision of Gravesham Borough Council.
 - The application Ref 20180193, dated 19 March 2018, was approved on 25 June 2019 and planning permission was granted subject to conditions.
 - The development permitted is the removal of condition (xi) attached to planning permission reference 19910618 (for the erection of a bungalow with detached double garage) to allow the retention of the detached outbuilding used for ancillary residential accommodation.
 - The condition in dispute is No 3 which states that:
Notwithstanding the provisions of Article 3, Part 1, Classes A, B, C, D, E, F, G and H of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (or any provision equivalent to those classes in any statutory instrument revoking and re-enacting that Order, with or without modification), no enlargement, improvement or other alteration of the ancillary accommodation hereby permitted shall be carried out, including any additional doors, windows or other openings, or any dormers, rooflights or other roof alterations shall be installed or carried out, or a porch constructed or erected outside any external door, or any building or enclosure for a purpose incidental to the enjoyment of the ancillary accommodation provided, including any fixed items of domestic paraphernalia, or any additional hard surface provided or any chimney, flue or vent pipe shall be installed.
 - The reason given for the condition is:
In order that any further enlargement, improvement or other alteration of the building may be the subject of a separate planning application which the Local Planning authority would wish to consider on its merits, having regard to adopted planning policy and guidance. In particular Policies CS02 and CS12 of the Gravesham Local Plan Core Strategy September 2014.
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Decision

1. The appeal is allowed and the planning permission Ref 20180193 for the removal of condition (xi) attached to planning permission reference 19910618 (for the erection of a bungalow with detached double garage) to allow the retention of the detached outbuilding used for ancillary residential accommodation at 79 Dream Valley, Rhododendron Avenue, Culverstone, Meopham DA13 0TU granted on 25 June 2019 by Gravesham Borough Council, is varied by deleting condition No 3.

Background and Main Issue

2. The appeal relates to a detached outbuilding within the garden of No 79. It was originally used as a dwelling, and permission was granted in 1991¹ for a replacement dwelling. The permission was subject to a condition that all other structures, including this one, must be removed from the site prior to the first occupation of the dwelling. However, the outbuilding was not removed from the site, and has been used as ancillary residential accommodation for some time.
3. Permission has been granted to remove the condition, thereby removing the requirement to demolish the outbuilding. However, the permission was subject to a further condition (No 3) removing permitted development rights for extensions, alterations or improvements to the building, with reference to Classes A-H inclusive of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). It is evident that the purpose of this appeal is to remove this restriction, as the appellant wishes to extend the outbuilding.
4. The reason for the condition refers to the Council's wish to control future extensions, and their evidence refers briefly to their concerns regarding the impacts on the Green Belt, landscape character, ancient woodland, amenity and highway safety. It therefore follows that the main issue is whether the condition is necessary in order to control future works to the outbuilding in the interests of the Green Belt, landscape character, ancient woodland, living conditions of neighbouring occupiers and highway safety.

Reasons

5. The building in question is an outbuilding within the curtilage of the dwellinghouse. The only GPDO provision referred to in the condition that applies to outbuildings within the curtilage of a dwellinghouse is Class E. Class E permits the provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building.
6. However, the outbuilding is in an ancillary use, as it provides living accommodation, and is not therefore being used for a purpose incidental to the dwellinghouse. Ancillary and incidental uses are entirely separate concepts in planning law. I note also that the building has a verandah, which in any case places it outside of the physical limitations of Class E. In short, it is not a building to which Class E applies, hence any extension or alteration to the building that amounts to development will require express planning permission. It is also relevant that Part 1 of the GPDO does not grant planning permission for any development on the basis that it would be for purposes incidental to the enjoyment of ancillary residential accommodation.
7. It therefore follows that the condition is not necessary to control future works to the outbuilding in the interests of the Green Belt, landscape character, ancient woodland, living conditions of neighbouring occupiers and highway safety.

¹ Ref 19910618

Conclusion

8. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal should be allowed.

N Thomas

INSPECTOR