



Appeal Decisions

Site visit made on 15 September 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 9 November 2020

Appeal A: APP/K3605/W/20/3244296

28 Sidney Road, Walton-on-Thames KT12 2NA

- 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 Kemp against the decision of Elmbridge Borough Council.
- The application Ref 2019/2279, dated 16 August 2019, was refused by notice dated 29 October 2019.
- The development proposed is a retrospective application for the extension of the existing garage to provide ancillary accommodation with external changes following demolition of existing garden wall and shed.

Appeals B and C: APP/K3605/C/20/3247324 &

APP/K3605/C/20/3247940

28 Sidney Road, Walton-on-Thames KT12 2NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr and Mrs Kemp against an enforcement notice issued by Elmbridge Borough Council
- The enforcement notice was issued on 22 January 2020.
- The breach of planning control as alleged in the notice is the material change of use from a detached outbuilding to a single dwelling house.
- The requirements of the notice are a) cease the use of the outbuilding as a residential dwelling, (b) remove all bathroom and kitchen fixtures, fittings and appliances and (c) remove from the land any resultant waste associated with fulfilling the requirements (a) and (b).
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 15 October 2020.

Decisions

Appeals B & C

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal A

2. The appeal is allowed and planning permission is granted for the retrospective application for the extension of the existing garage to provide ancillary

accommodation with external changes following demolition of existing garden wall and shed at 28 Sidney Road, Walton-on-Thames KT12 2NA in accordance with the terms of the application, Ref 2019/2279, dated 16 August 2019, subject to the following condition: The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 28 Sidney Road, Walton-on-Thames KT12 2NA.

Reasons

Appeal A – Planning application and Appeals B & C - ground (a)

3. The development plan includes the Core Strategy [CS] and the Development Management Plan [DMP]. There is also design and management Supplementary Planning Guidance. CS Policy CS17 relates to local character, density and design which have to be respected and responded to. DMP Policy DM10 relates to housing mix. Ancillary accommodation should be subservient to the main dwelling and can be the subject of restrictions regarding occupancy. DMP Policy DM2 refers to design and amenity.
4. The proposal relates to an existing garden building at the boundary of the property which has been extended and altered. It abuts directly with the neighbouring garage and is of masonry construction with a pitched roof. The building itself, including its alterations, is appropriate for its location and is in keeping with the character and appearance of the area in terms of size, design and materials, is subservient to the existing dwelling and accords with Policies CS17, DM2 and DM10 in this respect.
5. It is well isolated from the neighbours, because it abuts their garage and there is at least a 2m garden wall on the boundary behind the neighbour's garage and a fence/wall about 2m high at the front of the boundary. However, I acknowledge and agree with the Council's view with regard to an independent dwelling and all that entails would not be subservient to the main house as required by DMP Policy DM10, in terms of additional activity, alterations to density, lack of amenity space, the associated change to the character of the area..
6. However, I see no reason why this structure should not be used in an ancillary way to the main dwelling and remain compliant with the Council's policies. The use would be limited to be ancillary to the main house and should result in limited additional activity. The character of the neighbourhood and density of dwellings would be unchanged. To this effect it is necessary to attach a condition to the permission to ensure that it remains ancillary and subservient to the dwelling in line with DMP Policy DM10. It would be compliant with CS Policy CS17 and DMP Policy DM2
7. For the reasons given above I conclude that the Appeal A planning application should be allowed, subject to a condition.
8. Appeals B and C under ground (a) and the deemed planning application relate to the allegation, which is the 'material change of use from a detached outbuilding to a single dwelling house'. This is obviously different from the planning application which is for ancillary accommodation. It is not acceptable to materially change what has been applied for by attaching a condition. Therefore, in my view attaching a condition to make the accommodation ancillary accommodation rather than the separate dwelling applied for would be

materially different and not acceptable. Without such a condition the separate use would be unacceptable for the reasons noted above and the appeals fail on ground (a) and the deemed planning application will be refused.

Appeals B and C – ground (f)

9. In my view, the provision of the kitchen and bathroom are part and parcel of, and enable the change of use, and therefore it is not excessive to require their removal. The wall in the rear garden is not integral to such use and it would be unreasonable for that to be considered as coming within the ambit of the notice and no change can be required to it, and in any case it would not make the separate use acceptable. I therefore conclude that the notice is not excessive and the appeal on ground (f) fails.
10. The appellant has argued that some changes to the outside area could make the use acceptable. These may be of some benefit, but would not make the overall use as a separate dwelling acceptable in terms of the character of the area. The appeal on ground (f) fails.
11. For information, while the notice is upheld, as the planning permission granted with this appeal is retrospective and has been implemented, it means that the notice would not have any effect, unless the use changes in the future to come within the remit of the notice.

Graham Dudley

Planning Inspector