



Appeal Decision

Site visit made on 20 August 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2021

Appeal Ref: APP/T5720/D/21/3275003

38 Tudor Drive, Morden, Surrey SM4 4PE

- 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 Basil A Rafay against the decision of London Borough of Merton.
 - The application Ref 21/P0279, dated 12 January 2021, was refused by notice dated 11 March 2021.
 - The development proposed is 'change of use of existing, permitted outbuilding to use as a Granny Annexe, for purposes ancillary to 38 Tudor Drive'.
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Decision

1. The appeal is allowed and planning permission is granted for 'change of use of existing, permitted outbuilding to use as a Granny Annexe' at 38 Tudor Drive, Morden, Surrey SM4 4PE in accordance with the terms of the application, Ref 21/P0279, dated 12 January 2021, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; 20/38T/P 100; Design and Access Statement.
 - 3) The change of use hereby permitted shall not commence until a fixed non-opening fence panel at a height matching the adjacent fence shall have been constructed in place of the existing gate, in accordance with details shown on attached plan no. 20/38T/P 100. The fixed non-opening fence panel shall thereafter be retained.
 - 4) Access to the flat roof of the outbuilding hereby permitted shall be for maintenance or emergency purposes only; in particular, the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
 - 5) The outbuilding hereby permitted shall not at any time be occupied other than for purposes ancillary to the residential use of the dwelling known as 38 Tudor Drive, Morden, Surrey SM4 4PE.

Preliminary Matters

2. The description of development in the heading above has been taken from the application form. The Council unilaterally amended the description of

development to "Retention of existing outbuilding for uses ancillary to 38 Tudor Drive". I also note that in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered, which is identical to that adopted by the Council.

3. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Moreover, 'retention' is not within the meaning of development as set out in Section 55 of the Town and Country Planning Act 1990 (as amended). Accordingly, I have used the description given on the application, albeit I have removed reference to specific occupants and, for the avoidance of doubt, I have specified the ancillary nature of the scheme.
4. The Council's reasons for refusal cite policy CS14 of the Merton Core Planning Strategy, adopted 2011. This policy makes no reference to the living conditions of neighbouring occupiers, which is the Council's stated reason for refusal.
5. The Revised National Planning Policy Framework (the Framework) was published on 20 July 2021. I am satisfied that the equivalent policies in the revised Framework have broadly the same approach as their counterparts, and they do not alter my conclusions on the matter in any case.

Main Issues

6. The main issues are the effect of the proposal on the living conditions of nearby occupiers, particularly in respect of loss of privacy, and noise disturbance to Nos 36 and 40 Tudor Drive.

Reasons

7. Ordinarily the use of an existing outbuilding for purposes ancillary to its dwelling would not amount to a material change of use requiring planning permission. However, the planning permission for the outbuilding, Ref 18/P1711 is subject to the following condition: "*The outbuilding hereby permitted shall not at any time be occupied other than for purposes incidental to the residential use of the dwelling known as 38 Tudor Drive, Morden, Surrey, SM4 4PE*". This permission was granted by an allowed appeal Ref APP/T5720/D/18/3209693 (the previous appeal).
8. The Inspector for the previous appeal considered the effect of the outbuilding on the living conditions of neighbouring occupiers. They concluded that there would be no unacceptable adverse impact in respect of loss privacy or overlooking by virtue of the siting of the building and its relative height with surrounding boundary features. I concur with this reasoning. The appeal scheme does not propose any alterations to the exterior of the existing outbuilding and, therefore, there is likely to be no effect on the living conditions of surrounding occupiers in respect of loss of privacy.
9. In respect of noise disturbance, there are no existing hours of occupation limits on the use of the building and therefore, the appeal scheme is unlikely to have any effect on noise disturbance in this respect. Moreover, the proposed ancillary use remains residential in nature and is unlikely to generate increased noise in comparison to the existing incidental use. To avoid disturbance along the boundary with no 36 Tudor Drive, the appeal scheme proposes to replace the external access side gate with a solid fence. This would restrict access to the outbuilding so that access would be via the dwelling only, and would

solidify the ancillary relationship between the two. For these reasons, the proposal would not result in an unacceptable increase in noise resulting in disturbance to adjoining occupiers.

10. Whilst I acknowledge that my colleague Inspector imposed a condition requiring the building be used for purposes incidental to the use of the dwelling only, it is clear from their justification for that condition that they sought to prevent any *unauthorised* introduction of an *independent use*, rather than ancillary functions. In any case, whilst the description of development for the purposes of the previous appeal was "*outbuilding used as a gym*", the Council had sought to unilaterally amend the description to "retention of existing outbuilding for uses *ancillary* to 38 Tudor Drive" (my emphasis).
11. For these reasons, I find that the appeal scheme would not result in noise disturbance or a loss of privacy to occupiers of neighbouring properties. The appeal scheme therefore accords with Policy DM D2 of the Merton Local Plan: Sites and Policies Plan and Policies Maps (LP:SPP), adopted 2014. This policy seeks, amongst other things, high quality design which ensures quality living conditions.

Conditions

12. The Council has requested five conditions to be imposed, should I be minded to allow the appeal. I have considered those conditions against the tests of the Framework and advice provided by the National Planning Practice Guidance.
13. I have imposed standard conditions requiring the development is carried out in a timely fashion, in accordance with the approved plans. The Council requested a condition requiring that surface materials be as specified on the approved plans; I do not consider this necessary as this is covered by the approved plans condition and the appeal scheme does not propose external alterations to the building itself. The scheme does, however, propose to replace a gate with a fence and I have, with the Appellant's agreement, imposed a condition requiring that a fixed non-opening panel is installed prior to the first use of the development, in order to ensure that access to the ancillary outbuilding is provided only via the house, as proposed.
14. To ensure the privacy and amenity of the occupiers of neighbouring properties is safeguarded, I have reimposed an existing condition to prevent the roof of the building being used as a raised platform. I have also imposed an amended version of a previous condition, which will prevent the unauthorised introduction of an independent use. Whilst I acknowledge that a separate use would require planning permission in any case, I consider the condition necessary for the purposes of clarity.

Conclusion

15. For the reasons outlined above, the proposal accords with the relevant policies of the Development Plan and the appeal is accordingly allowed.

Kim Langford Tejrar

INSPECTOR