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## Appeal Decision

Site visit made on 10 November 2021

**by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> November 2021**

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**Appeal Ref: APP/J1535/D/21/3278460**

**39 Dukes Avenue, Theydon Bois, Epping CM16 7HG**

- 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 J Donnelly against the decision of Epping Forest District Council.
  - The application Ref PL/EPF/0439/21, dated 16 February 2021, was refused by notice dated 10 May 2021.
  - The development proposed is a single storey detached self-contained garden annexe. Existing cross over to be increased in width to facilitate a new car parking arrangement on the site.
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### Decision

1. The appeal is allowed and planning permission is granted for a single storey detached self-contained garden annexe and existing cross over to be increased in width to facilitate a new car parking arrangement on the site, at 39 Dukes Avenue, Theydon Bois, Epping CM16 7HG in accordance with the terms of the application, Ref PL/EPF/0439/21, dated 16 February 2021, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the approved plan No 39CM167HG/FCA/21/001.

### Preliminary Matter

2. The appellant has confirmed that the application was made on the basis that the building would be occupied as a residential annexe by a family member of the occupiers of No 39. It has not been advanced as a separate dwelling. Whilst the building would be 'self-contained' and have facilities for independent living inside, the building would share a garden, driveway and parking with No 39, as well as being in close proximity to the house. The patio doors providing access to the unit would directly face the rear of No 39 and the shared space between them. It would therefore have the configuration and shared arrangements consistent with a residential annexe rather than a separate dwelling.
3. I have therefore determined the appeal on that basis. Were such a structure not consequently built or used as an annexe or, were there a material change of use of such a building in the future to create a separate dwelling, then a separate grant of planning permission would be required. Such a building or

change of use would be at risk of enforcement action should planning permission not be granted or not applied for.

## **Main Issues**

4. The main issues raised by this appeal are: i) the effect the development would have on the character of the area; ii) the effect the development would have on the living conditions of occupiers of surrounding dwellings, with particular reference to any noise and disturbance that might occur; and, iii) whether or not the development would provide acceptable living conditions for future occupiers.

## **Reasons**

### *Character*

5. Due in part to its somewhat elevated situation relative to No 39, the proposed annexe would be clearly noticeable from Heath Drive over existing and proposed fences enclosing the garden of the intervening 39a Dukes Avenue and the widened access. However, adjacent and nearby gardens are not devoid of sizeable outbuildings. The proposal would appear markedly larger than the existing single garage on the site and larger than existing outbuildings in the vicinity visible in rear gardens from Heath Drive. Nevertheless, its simple form and subordinate scale compared to No 39, along with it being well set back from Heath Drive, would limit its visual effects and avoid it appearing overly conspicuous in its context.
6. Although the development would occupy a sizeable area of the space to the rear of No 39 it would retain space on all sides including a shared garden between it and No 39. Therefore, whilst it would appear to take up more garden space than other outbuildings in the vicinity it would not be so extensive as to overwhelm the plot. Consequently, it would avoid materially harming that part of the area's character made up by generous rear gardens.
7. The widened vehicle cross over would leave extensive grass verge remaining along Heath Drive on either side. It would not appear markedly different in its extent to some cross overs farther along Heath Drive where they serve two adjacent dwellings. This element would not be at odds with the character of the area. Its occupation as an annexe would not undermine the residential character of the area which is distinguished by medium sized family homes as No 39 would remain as the principal accommodation on the site.
8. Whilst not strictly an extension, by not harming the appearance of the streetscene and the existing building, the development would avoid conflict with Epping Forest District Local Plan, 1998 (Local Plan) saved Policy DBE10. It would similarly avoid conflict with the emerging Epping Forest District Local Plan, 2017 (EFDLP) Policy DM 10, criterion E, and Policy DM 9, criterion D, dealing with design standards and, design and quality of extensions. The development would accord with the National Planning Policy Framework's (the Framework) requirement that developments are sympathetic to local character.

### *Neighbours' living conditions*

9. The annexe would be situated close to the garden boundaries of 37 and 39a Dukes Avenue on either side and 1 Heath Drive to the rear. However, there is no substantive evidence that the residential occupation of the annexe would

give rise to any more noise, nor activities that may disturb, than one would reasonably expect to be experienced in gardens.

10. The domestic activities and daily comings and goings of the annexe occupier are very unlikely to be more intense or of a materially different character to that generated by people using gardens or existing outbuildings for domestic purposes. If the occupier were to have a car there would be space for it to be parked along with another vehicle from No 39 in part of the site currently used for parking and access. In fact, depending on the activities, the use of outbuildings as workshops or for noisy hobbies could well lead to greater noise and disturbance. The development would not have an adverse effect on neighbouring occupiers' enjoyment of their gardens and therefore their living conditions.
11. The Council's third reason for refusal points to a lack of demonstration of need for the Annexe. However, there is no requirement in the adopted Local Plan policies that a need for an annexe must be demonstrated for it to be acceptable. I appreciate that the Council and interested parties are concerned that the proposal might lead to the subdivision of the plot and create a separate dwelling. Effects on neighbours' living conditions may well be materially different were a separate household to occupy the building independently. Nevertheless, this is not what is proposed.
12. The proposal would not conflict with saved Local Plan Policy DBE9's requirement that development avoids an excessive loss of amenity. It would similarly avoid conflict with criterion H of emerging EFDLP Policy DM 9 and the Framework's requirement that new developments create a high standard of amenity for existing users.

*Future occupiers' living conditions*

13. The Council has not substantiated its objection that the annexe would be a substandard form of accommodation. Although small and compact, as an annexe, occupiers could reasonably be expected to also make use of space and facilities within No 39. The shared garden space would be relatively small but it would not be subdivided. It would not be so compact that occupiers of the main house and annexe could not simultaneously enjoy relaxing or carrying out outdoor domestic tasks in the space.
14. Therefore, whilst the space and configuration may well be too constrained for a separate dwelling, there is no substantive evidence that future occupiers of an annexe to the main house would endure inadequate living conditions. Furthermore, I note that the Council's officer report advises that, were it considered in isolation, the proposal would be of an acceptable size. The development would therefore avoid conflict with Local Plan Policies in this regard. I note that neither Local Plan Policies DBE9 or DBE10 specifically deal with occupiers' living conditions in respect of proposed accommodation. It would not conflict with the Framework's high standard of amenity expectations for future users.
15. Emerging EFDLP Policy DM 10 requires new housing to comply with space standards. Notwithstanding that, for reasons previously stated, this part of the emerging Policy would not be relevant to the development proposed, in any event the development would accord with minimum space standards for a single bed occupancy according to the appellant's floorspace figure.

### **Other Matters**

16. A number of the Council's and interested parties' concerns would appear to be based on the effects that a separate, independent dwelling sub-dividing the plot, would have. However, as set out in my Preliminary Matter, I have determined the appeal on the basis of the development applied for.
17. Although very few details have been provided about previous schemes on the site which were dismissed on appeal, from the information available they were for separate dwellings and therefore materially different to the proposal before me. In any event I have determined the appeal on the basis of the evidence in this case. These other matters do not, therefore, lead me to a different conclusion.

### **Conditions**

18. It is necessary to attach a condition specifying the approved plans as this creates certainty for all parties.

### **Conclusion**

19. For the above reasons the development would not harm the character of the area nor anyone's living conditions. As such it would avoid conflict with the development plan taken as a whole. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. The appeal should therefore be allowed.

*Geoff Underwood*

INSPECTOR