



Appeal Decision

Site visit made on 11 October 2022

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/K2230/W/22/3290824

Waterworks House Annexe, School Lane, Higham, Rochester ME3 7JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Alan Hoggarth against the decision of Gravesham Borough Council.
 - The application Ref 20210284, dated 5 March 2021, was refused by notice dated 22 July 2021.
 - The application sought planning permission for conversion of existing workshop and garage to a one bedroom annexe ancillary to the main dwelling without complying with a condition attached to planning permission Ref 20160099, dated 12 May 2016.
 - The condition in dispute is No.4 which states that:
"The outbuilding hereby permitted as ancillary accommodation shall be occupied only in conjunction with the original dwelling house at Waterworks House, School Lane, Higham, as a single dwellinghouse and shall not be used, let or sold at any time as a separate unit of living accommodation whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 as amended."
 - The reason given for the condition is:
"A separate unit of accommodation would be inappropriate on this site and in accordance with Policies CS02 and CS19 of the Gravesham Local Plan Core Strategy (2014)."
-

Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. As described above, planning permission was granted in 2016 for the conversion of the workshop at the rear of the site into a one bedroom annexe, ancillary to the main dwelling of Waterworks House. Condition 4 of the permission ensured that the building would be occupied only in conjunction with Waterworks House, and that it would not be used, let or sold at any time as a separate unit of accommodation. Based on information provided by the appellant, the conversion allowed the outbuilding to be inhabited by an elderly relative. Since that relative has passed away the outbuilding has been used by visiting family.
3. The appellant seeks to vary condition 4 by removing the word 'let'. The appellant's statement suggests, alternatively, the condition could be removed. This is intended to allow the outbuilding to be let for short periods.
4. The appellant has submitted an additional drawing showing the layout of the external areas at the back of the appeal site, in front of the outbuilding. As this

provides additional clarity, and as the Council have had the opportunity to comment on it, I have had regard to the additional plan in my consideration of the appeal.

Reasons

5. Waterworks House is a detached two storey dwelling with a long garden extending to the east. It has a vehicular access and off-street parking area in front of the main building, accessed from School Lane. To the south Waterworks House adjoins Land Way, which provides access to the back of the site as well as to a community facility and car park behind, and links to a public footpath which extends into the countryside beyond.
6. The appeal relates to a single storey outbuilding at the far end of the garden of Waterworks House. It benefits from an area of hard surfacing for parking of two vehicles, accessed via an adjacent sliding gate from Land Way, providing a separate point of access to the back of the site. The outbuilding also benefits from a small landscaped garden area, which is separated from the main garden of Waterworks House by fencing and foliage. A pathway provides a pedestrian link from the outbuilding back to Waterworks House. The outbuilding itself includes an open plan kitchen/ living area, as well as a double bedroom and bathroom. These are served by windows in the front elevation as well as roof lights.
7. I recognise that the proposal is to allow short-term letting of the building. However, based on the evidence and findings of my site visit, in practice, the access to the building and its internal layout would provide all the facilities necessary for domestic existence and users of the building could function independently of the main house. They need not have any connection to the occupants of the main house.
8. While I note the appellant proposes to maintain services, including waste collections, through Waterworks House, this alone would not result in the use of the outbuilding being integral to that of the house. While the appellant does not intend to sell the building, the building's ownership would similarly not necessarily establish an ancillary relationship.
9. For the above reasons, and in the absence of evidence as to how the building would remain ancillary, I find that the use of the building for short term lets as described would result in the building no longer having an incidental link or relationship to the main house. As such it would not be in ancillary use but would, in effect, become a separate unit of accommodation.
10. Planning Practice Guidance (PPG) states that an application under section 73 of the Act can be used to vary or remove conditions associated with a planning permission. It goes on to state that section 73 cannot be used to change the description of development.
11. Recent case law¹ has found that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the original permission was granted. Consequently, the

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor UK Limited [2019] EWCA Civ 1868.

original description of development in an existing planning permission cannot be amended at all.

12. Thus, should the appeal be allowed, the resulting development would be inconsistent with the original planning permission which refers to an 'annex ancillary' to the main dwelling. Consequently, the proposal would offend the principles established by case law and is beyond the powers available under section 73. It therefore follows that the appeal cannot succeed.

Conclusion

13. For the reasons given, the appeal is dismissed.

C Shearing

INSPECTOR