
Appeal Decision

Site visit made on 26 September 2022

by Rebecca Thomas MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2022

Appeal Ref: APP/Q3820/D/22/3300248

3 Kithurst Close, Southgate, Crawley RH11 8TD

- 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 Gary Cooper against the decision of Crawley Borough Council.
 - The application Ref CR/2021/0564/FUL, dated 27 July 2021, was refused by notice dated 25 May 2022.
 - The development proposed is erection of single storey outbuilding for use as ancillary accommodation/office/storage for use in connection with main dwelling house only.
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Decision

1. The appeal is dismissed.

Procedural matter

2. There appear to be a number of queries with regard to the internal layout of the proposed building. Nonetheless, the appellant has confirmed in the appeal documents that the proposal is to provide sleeping accommodation with no cooking facilities. I am able to see that this is the case as shown on the appeal documents and plans and as such I have considered the case in accordance with the evidence before me.

Main Issues

3. The main issues are:
 - (i) Whether the proposed development would constitute an ancillary annex or a separate dwelling;
 - (ii) The effect of the development on the character and appearance of the area, with particular reference to the proposed layout and the relationship with protected trees; and
 - (iii) The effect of the development on water neutrality.

Reasons

Whether an ancillary annex or a separate dwelling

4. The Council considers the proposal is tantamount to the creation of a separate dwelling. This is based on the varying descriptions and statements throughout the planning application, relating to the proposed use. The Council also finds that the physical and functional separation of the facilities for day to day living within the proposed building from the main dwelling, the size of the internal

layout and the inconsistencies in the information provided and these factors support the conclusion that the proposal would constitute a separate dwelling which may be used independently.

5. Given the varying descriptions, the size and the range of facilities that may be available within the building, I agree with the Council that it has the potential to be used as a separate dwelling house. However, notwithstanding the above, the application submitted to the Council was not for a separate dwelling. The application form confirms it is for "*ancillary accommodation...for use in connection with main dwellinghouse only...*"¹.
6. I note from the appeal documents that a previous application² was refused for similar reasons, albeit the Council confirms that the proposals forming part of this appeal have removed the kitchen. I am able to see that the floor plans show only a bedroom and bathroom, with ancillary office/storage/gym space. I accept that the larger room may well be used for a sitting area, however in support of the appeal, the appellant confirms that the building would only be used by a family member. There is no contrary evidence or any other reason for me to doubt that would be the case.
7. The building would be single storey and simple in design and layout, and would remain relatively small to the size of the dwelling. It would be located close to the boundary in the rear corner of the garden. Overall, I consider that the design and appearance would retain an appropriate scale and appearance as a minor curtilage building to the main dwelling. There is no national or local planning policy requirement that the location of a proposed annex should be close to or adjacent to the main dwelling for the purposes of determining whether or not it would be ancillary. Moreover, if the building were to be required for independent purposes other than ancillary to the main house, then this would require a planning application which would need to be tested against prevailing local and national planning policies at that time.
8. As such, I consider on the balance of all the evidence before me that the Council's fears over the certainty of the use of the building and the fears over future pressure for it to become a separate dwelling are unwarranted in this particular case. I return to the location of the annex with regard to its effect on the character and appearance of the area below.
9. Therefore I conclude on this first issue that the annex would be ancillary and would not constitute a separate residential dwelling. As such, there would be no conflict with policies CH3 and H1 of the Local Plan³ which seek to provide housing in appropriate areas.

Character and appearance

10. Kithurst Close is a cul-de-sac located in a residential area, which is characterised by quiet streets which have a sense of green infrastructure and openness, as a result of grassed verges and a high number of trees within public spaces and in gardens. Houses are set back from the road, with many having mature shrubbery or hedges to frontages, with Kithurst Close in particular having a character of openness as a result of a green island and the setting of trees behind the appeal site. The site is located on lower land than

¹ Submitted planning application form, question 4.

² CR/2021/0281/FUL

³ Crawley Borough Local Plan 2015-2030 (December 2015)

the road at Chanctonbury Way, which is the spinal road leading from Kithurst Close and the appearance of the area is characterised by the amount of green views through rear gardens and open spaces.

11. The annex would be a single storey building of simple design, being a dual pitched building of a height of 4m to the ridge. It would be located to the rear of the garden, close to the exiting garage/workshop building. Materials would be to match the main building, which is a combination of brick and cladding.
12. At the time of my site visit I was able to see that the timber building was used for workshop purposes, and whilst the garage had windows and doors of domestic appearance, it appeared to be me to be used primarily for storage. The proposed development would be located to the rear of the garden and as confirmed by the Council would not be significantly visible within the streetscene and would not cause harm to the appearance and design of the existing dwelling and streetscene. I see no reason to reach a different conclusion on this matter.
13. The Council also says that the extent of current extensions and the garage already at no. 3, the proposed development would result in a substantial detached building which would be out of character with the area. Whilst I can see that the proposal would introduce a new built form into the garden, there would remain garden space for the house and ancillary building. The dwelling has off-street parking to the front of the dwelling and garage building and as such I conclude that the introduction of an additional building, whilst increasing built form, would not cause unacceptable harm to the character and appearance of the area.
14. Section 197 of the Town and Country Planning Act 1990 places a duty on LPAs to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made, by the imposition of conditions, for the preservation and planting of trees.
15. The site is located close to a group of protected trees, which sit outside the application boundary on third party land. The Council is concerned that the building and its proximity to the trees may result in additional pressure for surgery or felling of the trees. I note that the Council's specification of trees refers to 3 oak trees. At the time of my site visit I was able to see that there are a number of mature trees close to the boundary of the appeal site, with one having been apparently pruned as seen from the appeal site. There were other branches overhanging the workshop and garage buildings.
16. The appeal documents show that there was a limited inspection of the protected trees, although the application documents have identified one oak tree as being of high life expectancy and amenity value. I was able to see that there were a variety of other trees close to the protected trees, however the impact of the development is not fully assessed though future inspections are recommended.
17. I have considered the effect of the development on the root protection areas (RPA) during construction as well as afterwards. I have been provided with an Arboricultural Report and Impact Assessment (dated 8 November 2021) which includes information on protection of trees and recommended construction methodology to ensure the development does not impact the RPA of the tree identified by the report.

18. Turning to the pressure on the trees following construction, I saw that a number of trees overhang the appeal site somewhat. It is not unreasonable to conclude that there may be some pressure on the trees, possibly including protected trees, as a result of the overhang; however I do not find that this is significantly different to the existing situation. There is some overhang to the garage currently and in time pruning may be required irrespective of the appeal proposals.
19. Notwithstanding this, the group of trees, including those which are protected, form a prominent feature within the local area and I consider that the pressure on the trees and possible loss would not serve to enhance or preserve the character and appearance of the area.
20. I am not persuaded that the proposed development can afford the necessary protection to the trees both during construction and post construction due to its close proximity and possible interference in the RPA. I have considered the option of a condition to mitigate for the identified harm through replacement planting. However, the trees are outside the control of the appellant and thus any protection during development cannot be secured. In addition to this, I am not convinced that there is sufficient space within the appeal site for any meaningful replacement planting and as such I am not persuaded that the development can be made acceptable through the use of a condition.
21. In conclusion, whilst I have no concerns with regard to the appearance of the proposed building, I nonetheless find that there is conflict with Policy CH3 which expects new development to protect and retain trees in the context of the site, including ensuring that trees which make a positive contribution to the area are not at risk of being removed because they significantly reduce the usability due to the proximity to new buildings. I have discussed the design of the proposed building in the above paragraphs. There is conflict with Policy CH2 which expects development to contribute positively to local character and distinctiveness and not harm these features.

Water neutrality

22. The Council asserts that Crawley is located in an area of serious water stress, identified by the Environment Agency, and the appeal site is supplied with water from the Sussex North Water Resource Zone (SNWRZ). In September 2021 Natural England confirmed that the SNWRZ may be effecting the Arun Valley abstraction sites. All applications which may affect water consumption should be 'screened' to identify whether the proposed development, individually or in combination with other projects, will result in a significant effect on the Arun Valley sites.
23. In accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Regulations'), it is necessary for me as the competent authority to consider the effect of the proposal on the integrity of the Arun Valley sites within the framework of an Appropriate Assessment (AA).
24. To be able to determine that a proposal would not be likely to adversely affect the integrity of the Arun Valley sites, advice from Natural England indicates that it would need to demonstrate that it would achieve no net increase in water consumption, thereby achieving 'water neutrality'. In advance of a strategic solution, Natural England has advised that demonstrating water

neutrality may be done through a combination of water efficiency measures and offsetting.

25. The appellant has provided a Water Neutrality Statement however the Council has found that the statement is generalised and does not address the Regulations adequately. It appears that there is some doubt as to whether the development would be covered by the appropriate assessments in respect of minor developments. I have found above that the proposal would not equate to the creation of a separate dwelling, and as such remains an ancillary building linked to the use of the main house. The appellant has provided various suggestions with regard to water saving measures however does not indicate how the development would be able to be water neutral.
26. The national Planning Practice Guidance on AA advises that mitigation measures need to be sufficiently secured and likely to work in practice⁴ and I need to have sufficient evidence to confirm that the proposal is capable of achieving water neutrality. I am not satisfied from the evidence before me that there is sufficient certainty that the impacts of the development have been properly assessed, nor that effective mitigation could realistically be secured for the development to offset any additional water demand at the site to achieve water neutrality. As a consequence, there is insufficient certainty to conclude that adverse effects on the Arun Valley abstraction points can be excluded.

Conclusion

27. For the reasons given above, I conclude that the appeal should be dismissed.

Rebecca Thomas

INSPECTOR

⁴ Paragraph: 004 Reference ID: 65-004-20190722