



Appeal Decision

Site visit made on 15 December 2022

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2023

Appeal Ref: APP/E5330/W/22/3298737

316 Bexley Road, Eltham SE9 2PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr. Kemal Mustafa, Vertical Sunrooms Limited against the Royal Borough of Greenwich.
 - The application Ref 21/3816/F, is dated 11 November 2021.
 - The development proposed is division of the land and change of use from garden outbuilding to a 1 bedroom dwellinghouse including car and cycle parking provision, waste storage provisions and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the division of the land and change of use from garden outbuilding to a 1 bedroom dwellinghouse including car and cycle parking provision, waste storage provisions and associated landscaping at 316 Bexley Road, Eltham SE9 2PN in accordance with the terms of the application, Ref 21/3816/F, dated 11 November 2021 and the plans submitted with it, subject to the attached schedule of conditions.

Applications for costs

2. An application for costs was made by Mr Kemal Mustafa, Vertical Sunrooms Limited against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appellant states that the outbuilding was originally constructed using permitted development rights associated with the host dwelling. The Council initially agreed, and the application was recommended for approval by officers. The recommendation was overturned by Members at Planning Committee, and the appellant submitted an appeal against non-determination prior to the decision notice being issued.
4. The Council state that, following the submission of the appeal against non-determination, new evidence came to light which suggested that the host dwelling's plot had already been sub-divided by a permanent fence at the time that the outbuilding was constructed. Consequently, the outbuilding could not be considered to be within the curtilage of the host property when it was constructed, and it was not constructed under the host dwelling's permitted development rights.

5. Following the submission of the appeal, the application was presented at a second Committee. At this Committee, as the Council considered the outbuilding was not constructed using permitted development rights associated with the host property, it assessed the acceptability of the retention of the outbuilding, as well as the proposed use as a dwelling.
6. The Committee resolved that, had it determined the application, it would have been refused with three separate reasons for refusal. I have had regard to the Committee report in so far that it provides clarity in terms of the reasons why the Council would have refused planning permission had it been able to do so.
7. At the time of my site visit it was possible to directly access the outbuilding via steps from the host property's garden and also from a gate which opens onto Parish Gate Drive. Regardless of the current layout on-site, the appellant contends that the division of the host property garden with a fence did not create a new planning unit. The appellant states that the outbuilding is connected to the host dwelling by provision of water and power, and the occupiers of the host dwelling have always been able to access the lower part of the garden. As a result, the outbuilding has never been used for any purpose that would sever its' functional link with the host dwelling.
8. The available evidence indicates that there is a reasonable likelihood that the building is lawful. As a consequence, I have determined the appeal on the basis of the original description of development for the change of use of the existing garden outbuilding and division of the garden of the host property.
9. However, my determination of this appeal on this basis does not prejudice the Council's position were they to consider it expedient to take enforcement action alleging that the building was not lawful.

Main Issues

10. The main issues are:

- The effect of the development on the character and appearance of the area; and
- The effect of the development on the living conditions of the occupiers of 312 and 314 Bexley Road, having particular regard to the outlook and privacy.

Reasons

Character and appearance

11. The appeal site consists of a two storey host dwelling located at the end of Bexley Road. It has an existing single storey outbuilding located within its rear garden. The available evidence indicates that the garden has previously been divided by a timber fence. At the time of my site visit, a number of fence panels had been removed enabling direct access from the host dwelling to the outbuilding and all parts of the rear garden.
12. The garden slopes steeply down towards the rear of the site. As a result, the outbuilding is positioned on ground which is lower than the host dwelling. Parish Gate Drive runs along the site's eastern boundary. The host dwelling, the outbuilding and a remaining section of the fence which previously divided the garden are all visible from views from the highway.

13. The proposed development would involve the reinstatement of the remaining section of fence which would subdivide the host dwelling's garden. Whilst the division of gardens may not be a characteristic of the area, from the available evidence, the fence which physically divided the garden was originally installed utilising the host dwelling's permitted development rights. Sections of the fence were partially removed to respond to the Council's concerns about a potential subdivision of the plot. However, the sections of the fence which are most visible from public viewpoints on Parish Gate Drive remain in situ. The proposed development would result in the reinstatement of areas of fencing which are located deeper into the garden, further from the site's boundary with Parish Gate Drive and which would not be prominent in public views. As a result, their reinstatement would not harm the character and appearance of the area.
14. As the outbuilding is already constructed its change of use would not result in additional backland development, nor would it erode the spaciousness of the host dwelling's garden. The drawings show that the change of use of the outbuilding would involve very minor external changes, including a change to a door on the front elevation and the inclusion of a rainwater butt and electric vehicle charger. Due to the limited nature of these alterations, they would not have a harmful impact on the character and appearance of the area.
15. The proposed development would also result in additional comings and goings, including vehicular movements, and additional domestic paraphernalia such as the refuse and cycle storage associated with a new dwelling. However, given the size of the dwelling, these would be limited and would have minimal impact on the character and appearance of the area.
16. For the reasons outlined above, I conclude that the proposed development would not harm the character and appearance of the area. Accordingly, I find no conflict with London Plan (2021) (LP) Policies GG2 and D3 or Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) (LPCSDP) Policies DH1, H5 and H(c). Amongst other aims, these policies seek to ensure high quality design which does not harm the street scene. Neither do I find conflict with those principles of the National Planning Policy Framework (the Framework) that seek good design sympathetic to the local area.

Living conditions

17. The neighbouring houses at No. 312 and No. 314 Bexley Road are located at an elevated position to the outbuilding. As a result, some views would be possible from the French windows within the new dwelling towards the elevated rear patio areas outside both houses' rear elevations. However, these areas are already overlooked by the rear facing upper floor windows of the adjoining houses on Bexley Road, and there would not be additional impact to the privacy of occupiers of these properties. The timber fence on the appeal site's boundary with No. 314 would prevent overlooking from the ground floor windows towards the rear of the gardens belonging to both No. 314 and No. 312.
18. The single storey and flat-roofed nature of the outbuilding ensures that it does not extend significantly higher than the timber boundary fence. The outbuilding is also set back away from the boundary with No. 314. Consequently, the proposed development, as a result of the siting and relationship with the neighbouring properties' rear gardens, would not have an adverse impact on

the living conditions of neighbouring occupiers in terms of a sense of enclosure and thus a loss of outlook.

19. For the reasons outlined above, I conclude that the proposed dwelling would not have a harmful effect on the living conditions of neighbouring occupiers. Accordingly, I find no conflict with LPCSDP Policy DH(b) which seek to protect the living conditions of occupiers of neighbouring adjoining properties.

Other Matters

20. An interested party has raised concerns about the appellant's approach to applying for planning permission for the change of use and questions about whether planning permission should have been sought for the outbuilding prior to its construction. However, as set out above, I have determined the appeal on the basis of the original description of development for the change of use of the existing garden outbuilding.
21. I have noted the concerns of the interested party but, given the single storey form of the dwelling, and its siting, I am satisfied that there is no material harm to the living conditions of adjoining neighbours, in terms of outlook and overlooking and loss of privacy. Even if the appellant may profit from the future sale or rental of the development, I have found that the proposed development would not unacceptably harm the character and appearance of the area nor the living conditions of neighbouring occupiers.

Conditions

22. The Council has provided a list of conditions, which I have assessed in regard to the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
23. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty. Details of the proposed boundary treatments need to be approved in the interests of the character and appearance of the area.
24. In the interests of waste management and to encourage sustainable transport. I have included conditions requiring the provision of refuse and cycle storage. As details of the refuse, recycling and cycle storage are shown on the drawings I have imposed compliance conditions rather than requiring the submission of additional details. A condition requiring the provision and retention of an off-street car parking space is required to prevent an increase in on-street parking.
25. I have included conditions relating to boiler emissions and to limit water usage in the interests of promoting sustainable design practices.
26. Given the small size of the site and relationship with surrounding buildings, I agree in the particular circumstances of this case that a condition which withdraws some permitted development rights for further extensions including outbuildings for the new dwelling is necessary. I have modified the condition so that permitted development rights for porches are not withdrawn.

Conclusion

27. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall be retained in accordance with the application plans, drawings and documents hereby approved and as detailed below:
Site location plan, DRAW/316.BR/1021/001/R1 (Existing and Proposed Block Plans), DRAW/316.BR/1021/002 (Existing Plans), DRAW/316.BR/1021/003 (Existing Elevations), DRAW/316.BR/1021/004/R1 (Proposed Floor Plans), DRAW/316.BR/1021/005/R2 (Proposed Elevations and Sections), DRAW/316.BR/1021/006 (Existing and Proposed Parish Gate Drive Street Scene Elevations), DRAW/316.BR/1021/007/R3 (Fire Safety Plan), DRAW/316.BR/1021/008/R2 (Proposed Drawings, showing Building Regulations Part M4(2) Annotations), P/316/BR/1021 (Site Location Plan).
- 2) Prior to the occupation of the development details of the proposed boundary treatments including gates, walls and fences shall be submitted to and approved in writing by the local planning authority. The approved boundary treatments shall be implemented prior to the first occupation of the development and retained for the lifetime of the development.
- 3) Prior to the occupation of the development the refuse and recycling storage shall be provided as indicated on drawing numbers DRAW/316.BR/1021/004/R1 and DRAW/316.BR/1021/008/R2 and maintained for the lifetime of the development.
- 4) Prior to the occupation of the development a minimum of 1 secure and dry cycle space shall be provided as indicated on drawing numbers DRAW/316.BR/1021/004/R1 and DRAW/316.BR/1021/008/R2 and maintained thereafter for the lifetime of the development.
- 5) Prior to the occupation of the development the car parking provision shown on drawing numbers DRAW/316.BR/1021/004/R1 and DRAW/316.BR/1021/008/R2 hereby approved shall be provided and retained permanently thereafter for the lifetime of the development.
- 6) Prior to the occupation of the development, details of the boilers shall be submitted to and approved in writing by the local planning authority. The boilers shall have dry NO_x emissions not exceeding 40 mg/kWh (0%). The boilers shall be installed and retained for the lifetime of the development in accordance with the approved details.
- 7) The development hereby permitted shall comply with Regulation 36(2)(b) of the Building Regulations 2010 (as amended by the Building Regulations (Amendment) Regulations 2015/767) and as set out in section G2 of the

Building Regulations Approved Document to limit water usage to 110 litres per person per day.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further extensions or alterations or outbuildings to the new dwelling hereby permitted shall be erected under Schedule 2, Part 1, Classes A, B, C, and E without the prior permission of the Local Planning Authority.

END OF SCHEDULE