



Appeal Decision

Site visit made on 20 March 2023

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 APRIL 2023

Appeal Ref: APP/G5180/W/22/3309643

53A Kechill Gardens, Hayes, Bromley BR2 7NB

- 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 Wes David against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/22/00308/FULL6, dated 18 January 2022, was refused by notice dated 8 August 2022.
 - The development proposed was originally described as: 'Retention and completion of substantially completed outbuilding in the curtilage of a family house, the use to be for leisure and home office use, incidental to the host dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for outbuilding for leisure and home office use at 53A Kechill Gardens, Hayes, Bromley BR2 7NB in accordance with the terms of the application, Ref DC/22/00308/FULL6, dated 18 January 2022, 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: 02; 03 Rev A; 04; 05 Rev B.
 - 3) The development hereby permitted shall only be used for purposes incidental to the residential use of the dwellinghouse identified on the approved plans as 53A Kechill Gardens and shall not be severed to form a separate self-contained unit of accommodation.

Preliminary Matters

2. The description of the development in the heading is taken from the planning application form. However, for the purposes of the decision in paragraph 1, an amended version of the description on the decision notice and appeal form is used instead, as it describes the scheme more accurately and concisely.
3. The application form and drawings suggest that the outbuilding subject to this appeal had been partly constructed but not completed when the application was made. The proposed elevation drawing¹ that the Council considered shows an outbuilding with a flat roof. However, an amended drawing² was submitted with the appeal documents which shows an outbuilding with a slightly pitched roof instead. The difference between the roof forms is minor and the Council

¹ Drawing reference: 05 Rev A

² Drawing reference: 05 Rev B

and interested parties have been able to consider the amended drawing. Accordingly, I have taken it into account as I am satisfied that prejudice does not arise in doing so.

4. When I visited, a completed outbuilding with a pitched roof was present near the end of the site's rear garden. However, the outbuilding is located closer to the site's rear boundary fence than is shown on the plans. Occupiers of properties in the immediate vicinity do not have a direct line of sight to the outbuilding, due to intervening boundary treatments and landscaping, and thus are likely to have formed views based on the drawings. I cannot be certain that all those with an interest in the scheme are aware of the exact position of the constructed outbuilding; or that those who made representations, or chose not to do so, acted based on the outbuilding as constructed and not as shown on the drawings. Consequently, in the interests of natural justice and to manage the potential prejudice that may otherwise arise, the decision is based on the proposed outbuilding shown on the drawings.

Main Issues

5. The main issues are the effects of the development on:
 - the character and appearance of the area; and
 - flood risk having regard to access to and the construction and stability of a culvert.

Reasons

Character and appearance

6. The outbuilding would be located near the end of the rear garden. According to the drawings it would be just over 2.8 metres in maximum height. It would feature white rendered walls according to the appeal submissions. Its roof would be felt, have a thick UPVC fascia, and create a canopy overhanging grey aluminium framed full height openings.
7. The rear gardens of the properties in the vicinity of the site vary in size but are mostly generously proportioned. Several properties feature outbuildings of differing sizes. Whilst none are directly comparable to the proposed outbuilding in size terms, it would nonetheless be proportionate in scale to the plot. It would have a contemporary appearance due to its materials and canopy design, and bright render would increase its prominence from the adjacent rear gardens. However, it would be largely screened from public views and its size, design and position would give the impression that it is an outbuilding which is subordinate and ancillary to the two storey dwellinghouse. Accordingly, it would be compatible with its residential setting.
8. Furthermore, the appellant indicates that the constructed outbuilding would be reduced in height to 2.5 metres to comply with Class E of the GPDO³ if the appeal were dismissed. The Council has not sought to contest that the constructed outbuilding would comply with Class E if that work were undertaken. The changes would not reduce the outbuilding's ceiling height to the extent that it would not be practicably usable. Hence there is a greater than theoretical possibility that the work would take place. Given that the

³ Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015

reduction to the constructed outbuilding's height would be limited, and visibility of it and the one shown on the drawings would be similar, comparable effects would arise. As such, this fallback position attracts significant weight.

9. Having regard to the effects of the scheme and the fallback position, the character and appearance of the area would not be harmed. In this respect it accords with Policies 6 and 37 of the Council's Local Plan, which set out design criteria for development and require adjacent buildings and areas to be complemented. Additionally, there are no conflicts with Policy D4 or Table 3.2 of the London Plan, which set out methods for scrutinizing the design of development and qualitative design criteria for housing.

Flood risk

10. The site is located within Flood Zone 1. Part of the culverted River Ravensbourne is located near the proposed outbuilding. The submissions indicate that outbuildings elsewhere in the vicinity are also near culverted sections of the river.
11. The Environment Agency has objected due to concerns regarding the culvert. However, evidence has not been put forward which shows the culvert's maintenance requirements or suggests that there is a formalised means of access to its below ground parts in the immediate vicinity of the outbuilding that would be impeded. Consequently, firm evidence has not been presented which indicates that the outbuilding would render the culvert inaccessible. Similarly, there is no substantive evidence which indicates that the load from the single storey outbuilding would lead to construction or stability issues. Moreover, the constructed outbuilding's proximity to and potential effects on the culvert would not be a relevant planning consideration if it were to be altered to comply with Class E. The proposed outbuilding would be located further from and thus have no greater effects on the culvert than the fallback development.
12. The Environment Agency raises that the development would require and be unlikely to obtain a flood risk activity permit. However, the permitting regime and others such as Building Regulations sit outside the planning system, and would endure irrespective of the outcome of this appeal. Accordingly, this matter attracts limited weight.
13. There is no evidence that the outbuilding would increase flood risk in other respects. Additionally, no issues have been raised by the Council's drainage team, and I see no reason to find otherwise in respect of drainage matters.
14. Based on the available evidence and in the context of the fallback position, the outbuilding would not increase flood risk. The proposal accords with Policy 115 of the Council's Local Plan and London Plan Policy SI12, which seek to reduce flood risk.

Other Matters and Conditions

15. The outbuilding would be sited towards the rear of neighbouring gardens and sufficiently distant from dwellinghouses that it would not result in significant light or outlook impacts. Although the outbuilding's finished floor level would be slightly higher than the garden, the openings in its front elevation would offer similar views to those from the garden. Moreover, the boundary fencing would prevent unacceptable privacy impacts arising from those openings.

16. There would also be a small window in the outbuilding's rear elevation. Although part of the window would be higher than much of the existing boundary fence, it would only provide for limited views towards the rear garden of No 55 due to its size and position. Consequently, the window would not lead to unacceptable effects on the living conditions of the occupiers of the neighbouring properties. Moreover, for that reason a condition to obscure glaze and fix shut the window is unnecessary.
17. Noise and disturbance concerns have also been raised. The outbuilding would feature a home office, gym, toilet and store, which would be incidental to the residential use of the dwellinghouse. Those sorts of incidental uses are commonly found in outbuildings, and there is no objective evidence that unacceptable noise or disturbance impacts would be generated. The Council has not identified issues about this matter. Furthermore, a condition to prevent the outbuilding from being used for purposes other than those incidental to the residential use of the dwellinghouse would safeguard the living conditions of the neighbours. In addition, there is no firm evidence that there would be conflicts between the uses of the outbuilding and the activities that would likely occur in adjacent gardens, or that local wildlife would be harmed.
18. The Council has recommended a condition to prevent the insertion of any additional doors or windows in the interest of neighbouring amenity. However, paragraph 54 of the National Planning Policy Framework states that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Having regard to the above findings in respect of living conditions matters, clear justification for that condition is not evident and so the condition is unnecessary.
19. Concerns have been raised that the proposal would create an undesirable precedent for similar development in future. However, as identified above, the outbuilding would be acceptable. Accordingly, there is nothing before me which suggests that it would lead to harmful development being permitted elsewhere in the locality.
20. In addition to the aforementioned condition, the standard time and approved plans ones are needed for certainty. The latter would also be needed to safeguard the character and appearance of the area as the drawings specify the external finish of the outbuilding.

Conclusion

21. For the above reasons, the appeal is allowed.

Mark Philpott

INSPECTOR