
Appeal Decision

Site visit made on 7 August 2023

by Rebecca McAndrew, BA Hons, MSc, PG Dip Urban Design, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.11.2023

Appeal Ref: APP/P3610/D/23/3320972
49 Lower Hill Road, Epsom, Surrey KT19 8LS

- 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 and Mrs Birch against the decision of Epsom and Ewell Borough Council.
 - The application Ref 23/00036/FLH, dated 11 January 2023, was refused by notice dated 28 March 2023.
 - The development proposed is the use of an existing incidental outbuilding to provide ancillary residential accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for the use of an existing incidental outbuilding to provide ancillary residential accommodation at 49 Lower Hill Road, Epsom, Surrey KT19 8LS in accordance with the terms of the application, Ref 23/00036/FLH, dated 11 January 2023, 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 following approved plans: site location plan, block plan, proposed layout, existing & proposed elevations.
 - 3) The building which is the subject of this decision shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 49 Lower Hill Road.
 - 4) The development hereby permitted shall be carried out in accordance with the mitigation measures detailed in the Flood Risk Assessment prepared by Flume Consulting Engineers dated January 2023 and shall be retained thereafter.

Application for costs

2. An application for costs was made by Mr and Mrs Birch against Epsom and Ewell Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have taken the description of development in the banner above from the Council's decision notice as it is more precise than that included on the planning application form. The appellants' statement confirms the revised description of development to be accurate.
4. I note that the outbuilding which is the subject of this appeal has been in situ for several years and, as such, the Council accepts that it has become lawful by virtue of the provisions of section 173(11) of the Town and Country Planning Act 1990 (as amended). Consequently, the Council and appellants agree that impact on character and appearance does not form part of the considerations of this appeal. I have no reason to take a different view in this regard.

Main Issues

5. The main issues are whether the proposal would result in the existing outbuilding being used as a separate residential unit and, if so, the effect on the living conditions of nearby residents in terms of noise and disturbance.

Reasons

Proposed Use

6. I note that previous appeal decisions relating to the cabin were dismissed in 2017. At that time the appellants' adult son and his partner occupied the structure. As such, the Inspector considered that the unit was used as a detached dwelling, intended for residential use independently from the main dwelling. He concluded that this would unacceptably harm both local character and appearance and the living conditions of neighbouring occupiers (APP/P3610/C/16/3161004, APP/P3610/C/16/3164450 and APP/P3610/W/16/3157541).
7. As outlined above, the cabin has remained in situ since the previous appeal decisions. Whilst the cabin is a sizeable unit, on my site visit I observed that the unit is currently used for storage and office space. I am therefore satisfied that the cabin is currently used as ancillary accommodation to the main dwelling.
8. The current scheme critically varies from the previous appeal proposals. The appellants require overnight sleeping accommodation for family members and guests, connected to the main dwelling. Whereas previously consent was sought to accommodate residents on a permanent basis.
9. The building is a significant size and is well-separated from the main dwelling. Given that it would contain a bedroom, a study, a shower room and a good-sized games/summer room (which could easily accommodate a kitchen area), it would be capable of providing facilities necessary for independent living.
10. However, the building sits within a common curtilage and looks back towards the rear of the appellants' home, with a degree of intervisibility. The building shares the garden area with the host property, with no subdivision of the plot proposed. The host property and the building also share vehicular and pedestrian accesses, with access to the outbuilding being either through the appellants' home, or via a footpath to the side of the main property. As such, whilst I acknowledge the previous Inspector's comments in this respect, in my view the layout of the site would make it difficult to occupy the building separately. It would be likely to result in significant loss of privacy and

disturbance to the host property. I also note that the building is in the same ownership and would share utilities with the host property.

11. In view of the above as well as the fact that, unlike the previous appeal proposal, there is no evidence to suggest that the appellants intend to use the building as a separate unit, I accept that the proposed bedroom would form part of the existing ancillary accommodation.
12. As indicated in Paragraphs 98 and 99 of Circular 11/95: Use of Conditions in Planning Permission, I am also satisfied that the occupancy of the building can be controlled by condition. Any change of use to create a separate dwelling would require a further planning permission. Should the property be used as an independent dwelling, then a material change of use would have occurred and the Council can take any necessary action.
13. I note that the previous Inspector had reservations that, at that time, it would be difficult to enforce a condition requiring the ancillary use of the cabin. However, the site circumstances have since changed. The structure appears to have been in continued use as ancillary accommodation since those appeal decisions and the building has now become lawful. I therefore consider that such a condition is now acceptable.
14. For the above reasons, I conclude the appeal proposals would not give rise to a separate dwelling. Therefore, there would be no conflict with Policies DM10 and DM16 of the Epsom and Ewell Development Management Policies Document 2015 (DMP) and the National Planning Policy Framework which, taken together, aim to secure development which respects local character and distinctiveness.

Living conditions

15. The Council maintains that the appeal building, including the proposed bedroom, is tantamount to a new dwelling and as such would be harmful to the living conditions of residents, due to noise and disturbance. Given that I have found that the outbuilding would remain as ancillary accommodation following the introduction of a bedroom, the level of noise and disturbance to the occupiers of neighbouring properties is unlikely to be significant. Consequently, there would be no conflict with DM Policy DM10 which aims to ensure development protects neighbours from unacceptable noise and disturbance.

Conditions

16. I impose conditions regarding timescales and the approved plans to provide certainty. A condition which seeks to restrict the use of the building to a residential annexe is reasonable, necessary and enforceable, to prevent the use of the building being used or occupied as a separate and independent dwelling. I have reworded the Council's suggested condition in this respect to reflect the standard condition within Circular 11/95. A condition requiring Flood Risk mitigation measures to be carried out is necessary to safeguard against flood risk.

Conclusion

17. For the reasons given above and having taken all matters raised into account, I conclude the appeal should be allowed.

Rebecca McAndrew

INSPECTOR