



Appeal Decision

Site visit made on 7 November 2023

by P B Jarvis BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28.11.2023

Appeal Ref: APP/J1535/D/23/3327505
39 Dukes Avenue, Theydon Bois CM16 7HG

- 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 Paul Saggars against the decision of Epping Forest District Council.
 - The application Ref EPF/0114/23, dated 19 January 2023, was refused by notice dated 5 July 2023.
 - The development is to regularise changes to the as built fenestration of a garden outbuilding to be used as an annexe under approval reference APP/J1535/D/21/3278460; the changes are as follows – 1. Entrance door and two windows, one serving bedroom the other the living room, are now situated on the north facing elevation. 2. Double doors and glazed side windows serving living room now on west facing elevation.
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Decision

1. The appeal is allowed and planning permission is granted to regularise changes to the as built fenestration of a garden outbuilding to be used as an annexe under approval reference APP/J1535/D/21/3278460; the changes are as follows – 1. Entrance door and two windows, one serving bedroom the other the living room, are now situated on the north facing elevation. 2. Double doors and glazed side windows serving living room now on west facing elevation at 39 Dukes Avenue, Theydon Bois CM16 7HG in accordance with the terms of application ref: EPF/0114/23 dated 19 January 2023 and subject to the following conditions:
 - 1) This permission shall relate to the following approved plan: drawing no. 39CM167HG/FCA/22/001.
 - 2) The existing fence to the east of the annexe, within the garden area of the host dwelling, No. 39 Dukes Avenue, shall be removed and the land reinstated to accord with the plans hereby approved within 2 months of the date of this decision.
 - 3) 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 fences, gates or walls shall be erected to the east of the annexe and between it and the host dwelling, No. 39 Dukes Avenue.

Main Issue

2. The main issue is the impact on the character and appearance of the host dwelling and wider street scene.

Reasons

3. The appeal site lies within a residential street predominantly characterised by semi-detached properties. The dwelling on the appeal site has been extended to the rear. A recently constructed outbuilding which is used as an annexe is located in the bottom half of the garden which lies at a higher level than the dwelling and the garden area immediately to the rear of it. There are steps up to the higher level but there is also a fence that separates the rear part of the garden, including the annexe, from the main dwelling and its garden area.
4. Planning permission was granted at appeal for the outbuilding¹. The Inspector noted that *"The patio doors providing access to the unit would directly face the rear of No 39 and the shared space between them. It would therefore have the configuration and shared arrangements consistent with a residential annexe rather than a separate dwelling."* In concluding to grant permission for the annexe, the Inspector noted that space on all sides of the building would be retained, including a shared garden between it and No. 39, that would not be subdivided and would allow for its shared use.
5. The annex has not been built in accordance with the approved plans. There are no windows in the east elevation facing the host dwelling and its garden area, and the entrance door and two windows are located in the north facing elevation with patio doors in the west elevation facing the small, paved area located to the rear of the annexe building. This is accessed via a gated entrance off Heath Drive to the north of the appeal site.
6. The changes from the approved plans in respect of the fenestration have not had a significant visual impact on the wider area as only the upper parts of the windows and the pitched roof are visible within the street scene. The building remains of subservient scale and appearance in relation to the host dwelling. Whilst it is of relatively substantial size, it still reads as an outbuilding rather than having the obvious appearance of a separate independent dwelling.
7. The change in fenestration, in particular the lack of any window facing toward the host dwelling and shared garden space has diluted the ancillary relationship somewhat, but not to the extent that of itself, would deem the fenestration changes to be unacceptable. However, its use as an ancillary annexe has been compromised by the fence that has been erected which separates the building from the host dwelling and which prevents there being a shared use of the garden space as noted by the previous Inspector. I note that this is not shown on the approved plans and the Appellant has confirmed that there is no change to the proposed boundary details.
8. I note the Council's view that the use of the building as a separate independent dwelling would be out of character with the established character of the area. However, the Appellant has stressed that is not what is being sought and confirms that the building would continue to be occupied as an ancillary annexe. On that basis, it is important that the ancillary relationship with the host dwelling is maintained and there should be a visual and functional

¹ APP/J1535/D/21/3278460

connection between the host dwelling and the annexe as concluded by the previous Inspector. The existing fence that has been installed would prevent this and is, therefore, not appropriate. However, conditions can be imposed to ensure that the existing fence is removed and that no other means of enclosure that would compromise the shared use and ancillary relationship of the annexe to the host dwelling are subsequently erected.

9. Overall, having regard to the above, I find that the development would not be harmful to the character and appearance of the host dwelling and wider area. It would thereby accord with Policy DM9 of the Epping Forest District Local Plan (2023) which seeks development of high quality design that contributes to the distinctive character and amenity of the local area and amongst other things, relates positively to its context.
10. I have also taken into account the National Planning Policy Framework and find that the proposal would accord with its policies that seek well designed development that is sympathetic to local character including the surrounding built environment.

Conclusions

11. For the reasons set out above, conditions are necessary to relate to the approved plans and to ensure that the existing fence to the east of the annexe is removed and future means of enclosure restricted. Whilst the Appellant has indicated a willingness to accept a condition to control the ancillary use of the building, that is unnecessary given that should it be used in the future as a separate, independent dwelling, that would require specific planning permission. This is consistent with the conclusion of the Inspector in the previous decision and I see no reason to conclude otherwise.
12. I therefore conclude that this appeal should be allowed and planning permission granted.

P B Jarvis

INSPECTOR