

# Appeal Decision

Site visit made on 21 November 2023

**by J Bell-Williamson MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12.12.2023**

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## **Appeal Ref: APP/A1530/D/23/3331098**

### **Floral Dene, Park Lane, Langham, Essex CO4 5NN**

- 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 David Harrison against the decision of Colchester Borough Council.
  - The application Ref 230423, dated 22 February 2023, was refused by notice dated 3 August 2023.
  - The development proposed is demolition of existing garage, construction of an annex.
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### **Decision**

1. The appeal is dismissed.

### **Main Issues**

2. The main issues are the effect of the proposed replacement building on the setting of Floral Dene, a Grade II listed building; and whether the proposal constitutes a residential annex in accordance with the development plan.

### **Reasons**

3. The appellant draws attention to an unsuccessful appeal for a similar proposal involving replacement of the existing garage by a cart lodge with a residential annex above<sup>1</sup>. I am well aware of that appeal as I was the appointed Inspector and I have had regard to the earlier decision.

#### *Effect on the Setting of Floral Dene*

4. Given that circumstances on the ground have not changed since the previous appeal, the findings in that case with regard to the relationship between the listed building and the site of the proposed building remain relevant.
5. Floral Dene is an attractive seventeenth century timber framed dwelling with a thatched roof set within a generous curtilage with garden to the side and rear. It is located at the settlement edge with neighbouring dwellings to the west and open agricultural land to the east. The existing single storey garage which is to be replaced lies directly behind the host dwelling with access via a driveway from Park Lane. As such, the replacement building would be within

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<sup>1</sup> APP/A1530/D/22/3310467 dated 16 January 2023.

the same residential curtilage close to Floral Dene and, therefore, this location forms part of the listed building's setting.

6. While Floral Dene's footprint is not insignificant, it is a modest thatched cottage, which is particularly apparent from its limited height with upper floor rooms evident from the small windows close to the eaves. As a single storey structure of limited size the detached garage is subordinate to the host dwelling, reflecting its purpose as an ancillary building.
7. The proposed replacement building comprises a single storey residential annex. The carport and upper floor elements from the previous proposal have been removed and, as a result, the building would have a roof ridge some 1.3 metres lower than that of the previously proposed building, as well as eaves at a lower level. Moreover, the rooflights have been omitted, which were found to be a harmful feature of the earlier proposal and the building would utilise appropriate materials for the semi-rural location, as in the earlier case.
8. In the earlier appeal, it was found that the proposed building would be materially larger than the garage it would replace, due to its height and frontage width. While the height of the building has been reduced, the width remains the same, which results in a building considerably larger than the existing ancillary buildings, the garage and a summerhouse. Moreover, the previous building, while of greater height, retained a visual relationship with the host dwelling due to the car port, which provided some evidence of its functional relationship.
9. The building proposed now would have the appearance of a moderately sized bungalow. As such, it would have the character and appearance of a new dwelling within its own self-contained area behind the hedge in the rear garden and with access to it from Park Lane. For these reasons, despite the proposed use as a residential annex, it would be read as a form of backland residential development of not insignificant size relative to the host dwelling that would not appear fully subordinate to it. Consequently, it would be incongruous in this location with regard to its relationship with Floral Dene and would detract from the overall setting of the listed building. Furthermore, it would be uncharacteristic of the surrounding area where it appears that such backland development is not a common feature.
10. As found in the earlier appeal, while the boundary hedge to the road frontage screens the existing garage from most views from the public realm, assessing the effects of development on the setting of a heritage asset is not dependent on public views being available. In any case, some views of the proposed building would be available between the host dwelling and the end of the hedge. Furthermore, I am mindful of the statutory requirement for decision makers to have special regard to the desirability of preserving the setting of a listed building<sup>2</sup>. In this context, the permanence of such screening by vegetation cannot be guaranteed in the long term, particularly compared to the permanent effects of a new building.
11. Accordingly, while I acknowledge that the current proposal seeks to respond to earlier unsuccessful one, for the reasons given it would fail to preserve the

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<sup>2</sup> Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

setting of Floral Dene. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation<sup>3</sup>. Based on the above findings, I consider the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.

12. Under such circumstances, the Framework advises that this harm should be weighed against the public benefits of the proposal<sup>4</sup>. As with the previous proposal, I acknowledge that the proposed building is intended to create additional living space, but this relates to a private rather than public benefit and, therefore, this is not sufficient basis to outweigh the harm that would occur.
13. Therefore, for the above reasons, I conclude that the proposed replacement building would not preserve the setting of Floral Dene, a Grade II listed building. Consequently, the proposal is contrary to Policy SP7 of the Colchester Borough Local Plan 2013-2033 Section 1 (2021), which requires that all development must meet high design standards and respond positively to local character and context. It is also contrary to the following policies from the Colchester Borough Local Plan 2017-2033 Section 2 (2022): ENV1 and DM16, which require the conservation and enhancement of the historic environment, including the setting of listed buildings; DM13, which requires that residential annexes must respect and enhance the character of the original dwelling; and DM15, which requires high design standards, including responding positively to context and character.

#### *Residential Annex*

14. Policy DM13 of the Local Plan Section 2 concerns domestic development, including residential annexes. For an annex to be supported, the policy requires it to be closely related to the main dwelling so that it cannot be subdivided from it; and some form of demonstrable dependence on the main dwelling, such as shared access and communal amenity spaces.
15. The footprint of and facilities within the proposed annex are largely unchanged from those of the previously proposed building, albeit the facilities are provided on one floor rather than two. I am mindful that appeal decisions should be made on a consistent basis and given that this proposal involves a similar annex in terms of use in the same location, with the same policy context, I have had particular regard to the findings in the earlier appeal and any differences between the two cases.
16. As in the earlier appeal, the annex building would be used as family accommodation ancillary to the use of Floral Dene as a dwellinghouse. It remains the case that the proposed building would be in relatively close proximity to Floral Dene within a common domestic curtilage and, as such, there is no basis to suggest that it could not function effectively as a residential annex. I acknowledge that the exclusion of the carport removes an element of the previous proposal that would make subdivision of the buildings less likely. Moreover, as found previously, due to the internal facilities proposed it would in

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<sup>3</sup> Paragraph 199.

<sup>4</sup> Paragraph 202.

principle be capable of residential occupation independent of any familial relationship with occupiers of the host dwelling, although that is not what is proposed in this case as in the earlier one.

17. In terms of ensuring that the annex would retain its original purpose and remain ancillary and tied to use of the main dwelling, it was found in the earlier appeal that an appropriately worded condition could achieve this. This would need to require that occupation is undertaken only by a dependant relative or other household member and that any other uses are incidental to the use of Floral Dene, recognising both the current proposal and longer-term use. Despite the exclusion of the carport in the current proposal, there are no material differences between the two cases that would lead me to reach a different conclusion on this issue.
18. Accordingly, I conclude that in the particular circumstances of this case, with an occupancy condition in place as described, the proposal would constitute a residential annex. As such, there is no conflict with Policy DM13 of the Colchester Borough Local Plan 2017-2033 Section 2, as described.
19. I have had regard to the representation made by Langham Parish Council. This does not, however, raise any additional matters in relation to the main issues in this appeal that would lead me to reach a different overall conclusion.

## **Conclusion**

20. I have had full regard to the recent appeal decision for a similar proposal and, as in that case, I have found in the appellant's favour with regard to one main issue, concerning the use of part of the building as a residential annex. However, this is not sufficient to outweigh the fact that the proposal is contrary to the development plan and the Framework as it would not preserve the setting of Floral Dene. There are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

*J Bell-Williamson*

INSPECTOR