



Appeal Decision

Site visit made on 3 November 2023

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Ref: APP/E2205/W/23/3316511

Willow Tree House, Bromley Green Road, Ruckinge Kent TN26 2EQ

- 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 Mrs Maureen Coleman against the decision of Ashford Borough Council.
 - The application Ref: PA/2022/2368, dated 1 September 2022, was refused by notice dated 2 December 2022.
 - The application sought planning permission to remove condition 3 of planning permission Ref: 19/00565/AS (Erection of a detached annex (Retrospective)), dated 31 May 2019.
 - The condition in dispute is No 3, which states that: The occupation of the residential annex building hereby permitted shall be carried on only by the following and their resident dependants: Mr Alan Coleman and Mrs Maureen Coleman.
 - The reason given for the condition is: To enable the Local Planning Authority to regulate and control of the site and due to the weight given to the personal circumstances in this case.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has asked me, in addition to the proposed removal of condition 3, to consider the removal of conditions 2 and 4 that if agreed would enable the building to be retained at the site as a separate and independent dwelling. However, removal of conditions 2 to 4 would result in a proposal that would conflict with the approved description of development, which currently refers specifically to the development being for an annex.
3. The description of development cannot be changed through this appeal decision as the planning application was submitted under s73 of the Town and Country Planning Act 1990 and relates to removal and / or variation of conditions to an existing planning permission. There are no powers under s73 to grant a new planning permission with a different operative part to that contained in the original permission. Therefore, consideration of the development as a separate and independent dwelling would need to be subject to a fresh planning application.

Main Issue

4. The main issue is whether the proposal is capable of remaining ancillary to the host dwelling without condition 3 and specific reference to named occupiers.

Reasons

5. The appeal relates to an annex building located to the rear of the long garden to Willow Tree House. The site is accessed from Bromley Green Road, which is a ribbon development not part of any identified settlement. The annex building is single storey with space for three bedrooms and associated living facilities. The annex has been separated from the host dwelling's remaining garden by fencing, which provides the development with its own private garden area. There is a commercial hairdresser outbuilding in between the development and host dwelling, providing further separation between the various buildings across the appeal site. The annexe shares the access from Bromley Green Road with the host dwelling albeit has its own separate driveway that leads to a parking area adjacent to the development.
6. Policy HOU9 (d) of the Ashford Borough Council Local Plan 2030 (the Local Plan) requires annex accommodation to be sited to ensure a clear dependency to be retained between the annex and main building at all times. In this regard, the annex is located a substantial distance from the host dwelling and due to the fencing that has been erected and hair dressers outbuilding in between, is physically separated from it. I saw on my site inspection that there is a gate in the fence between the host dwelling and annex that provides access between the two parts. Whilst this provides an element of connection, the annex itself has the facilities required for independent day to day living without any clear or obvious functional or physical dependency on the host dwelling. As such, there is a conflict with HOU9 (d) of the Local Plan.
7. As has been set out in the information before me, this conflict was outweighed and overcome by the personal circumstances of the applicant at the time the original planning permission was granted in 2019. As these personal circumstances would not apply to any future occupier of the site, I would need to be satisfied that the development is capable of remaining ancillary to the host dwelling to negate the need for occupiers to be named in a condition. Based on the information before me, I am not persuaded this would be the case given the distance of the annex from the host dwelling, the facilities for independent living that are provided and the physical separation that exists. Moreover, the appellant themselves acknowledge that the building is capable of being occupied as a separate dwelling. In this regard, I agree that the annex building has the characteristics of a separate dwelling albeit for the reasons stated I am unable to consider the merits of this in this decision.
8. In terms of whether there are any new material considerations that could outweigh the ongoing conflict with HOU9 (d) should condition 3 be removed, I agree with the appellant that the appeal site has been well designed, assimilates successfully within its context without significantly harming the local character of the area and, having been in situ for a number of years, does not cause harm to the amenity of existing residents. However, I can only give these matters limited weight in this decision as they in themselves do not relate to whether the building is capable of remaining as ancillary to the host dwelling without a named occupier condition.
9. I also have sympathy for the appellant's reasons for needing to sell the host dwelling and understand the resultant need to resolve the planning status of the annex. This is not, however, sufficiently material to outweigh the conflict

with the development plan based on the information before me. Moreover, there also remain other options potentially available such as making a fresh application to retain the building as a separate dwelling, or make other amendments at the site to ensure a clearer dependency with the host dwelling.

10. In summary, it has not been demonstrated that the annex is capable of remaining ancillary to the host dwelling were condition 3 to planning permission Ref: 19/00565/AS removed. Condition 3 therefore remains reasonable and necessary. As such, the proposal is contrary to Policy HOU9 of the Local Plan, which amongst other things requires annex accommodation to be clearly ancillary and visually subordinate to the principal dwelling and is sited to ensure a clear dependency is retained between the annex and the main building at all times.

Conclusion

11. For the reasons given above, the proposal is not consistent with the policies of the development plan as a whole. There are no material considerations that would lead me to a different conclusion and I determine that the appeal should be dismissed.

N Perrins

INSPECTOR