Development Control – Delegated Officer Report

Application Number: AWDM/0879/21 Recommendation –Approve

Site: 29 The Gardens, Southwick BN42 4AP

Proposal: Application for Lawful Development Certificate for a proposed single storey timber home office building in the back garden

Site visit: N

Proposal, Site and Surroundings

The property is an amenity area to the rear (north) of no. 29 The Gardens, Southwick. The amenity land is separated from no. 29 by an access road used by vehicular traffic which ranges from a width of some 2.3m at its start, between no.'s 27 & 29, and widens to approx. 3.5m and up to 4m in width.

The amenity area is in a row of other amenity areas, which, it seems, are linked to properties to the south of them, and indeed the application as submitted, has edged the property no. 29 in a blue, thereby denoting ownership. No. 29 is a two storey end of terrace dwelling, situated on the north side of 'The Gardens'.

The application site backs onto the railway lines, and currently has a garage and a lean-to positioned on the south end (front) of the land.

Neighbouring plots have outbuildings on them, including hardstanding's and garages. (No. 31 gained a Lawful Development Certificate for the stationing of a mobile home in the rear garden to be used as 'granny annexe' by a dependent relative. Approved 11.11.2013: AWDM/1181/13 refers

The site is not within a Conservation Area and the building is not a Listed Building.

Proposal applied for:-

The application seeks to gain a home office within land to the back of no. 29 The Gardens, and is amenity area linked to that property.

The structure proposed is shown to be 5.5m wide x 8m long; and would be brick faced and have a flat roof; it would be rectangular shape, with no windows or other openings, on three of the four elevations. The south elevation would have glazed windows and door across neigh on the full width of the elevation.

The agent has confirmed that its height would be 2.5m

Internally, the home office is indicated as having an office/studio area; a kitchen and a wc.

It is positioned close to/onto the boundary with the rear amenity land at no.27 The Gardens; between approx. 400mm and 1.2m from the rear boundary; approx. 1m from the boundary with no. 31; and between 13m and 14m from the front boundary of this back garden section of land.

The land around the home office is indicated as being paving slabs; and the front section of the land is shown to be a grassed area.

The existing garage at the front of the back garden and the lean to next to it, are shown as remaining.

The Agent confirms that they are applying for a home office within his email dated 21.06.21

Consultations

The Council's Legal team have referred Officers to the Court of Appeal in Burford v Secretary of State for Communities and Local Government (2017) which has confirmed that the following three factors are to be taken into account when determining whether or not a structure or object is within the curtilage of another building, namely

1. The physical layout of the building and the other structure

2. Their ownership, past and present

3. Their use and function, past and present (Attn Gen ex rel Sutcliffe v Calderdale MBC (1983) applied).

The Court further applied Dyer v Dorset Council (1989) in confirming that an area of land cannot properly be described as curtilage unless it forms part and parcel of the house or building which it contained or to which it was attached. Legal advice is that this appears to be the case here by way of the land registry freehold title for 29 The Gardens which links the house and land up to the railway land together.

A previous application in 2013 for a lawful development certificate for the stationing of a mobile home in the rear garden of 31 The Gardens to be used as 'granny annexe' by a dependent relative (AWDM/1181/13) also identified the land at the rear of the dwellings in The Gardens as being curtilage, despite the separation caused by the access road.

Therefore the evidence would show that the land at the back is linked with the dwelling and therefore is curtilage land to the dwellinghouse no. 29 The Gardens.

Planning Assessment

Principle

The proposal will be viewed against the criteria of permitted development, as laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Consideration

The home office should be assessed against:-

Town and Country Planning, England
The Town and Country Planning (General Permitted Development) (England) Order 2015

Schedule 2 - Permitted development rights

Part 1 – Development within the curtilage of a dwellinghouse

Class E – Buildings etc. incidental to the enjoyment of a dwellinghouse

Permitted development

E. The provision within the curtilage of the dwellinghouse of –
a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
b) a container used for domestic heating purposes for the storage of ail or liquid petroleum gas.

Analysis:

(a) Agents letter dated 21.06.2021 states:-

"I confirm that the office is for working from home.

I believe it is permitted development as it has a floor area within the allowable square meterage and an eaves of height of 2.5m and that it is to be used for working at home only."

b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Analysis: This does not relate to the submitted application

Development not permitted

E.1 Development is not permitted by Class E if—

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Analysis: The dwellinghouse was not granted by Class M, N, P, PA or Q etc.

(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

Analysis: The ground area covered by the buildings (garage; lean-to; new proposal) as shown is less than 50% of the total area of the curtilage.

(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

Analysis: No part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

(d) the building would have more than a single storey;

Analysis: The building has a single storey.

(e) the height of the building, enclosure or container would exceed—
(i) 4 metres in the case of a building with a dual-pitched roof,
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
(iii) 3 metres in any other case;

Analysis: The building has a flat roof and the agent has again confirmed that the height is 2.5m.

The structure is some 1m from the east boundary and directly abuts the west boundary; and it ranges from 400mm to 1.2m from the north boundary, the building thereby accords with the above.

(f) the height of the eaves of the building would exceed 2.5 metres;

Analysis: As stated above, the eaves height/overall height of the building is 2.5m

(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

Analysis: The building would not be within the curtilage of a listed building.

(h) it would include the construction or provision of a verandah, balcony or raised platform;

Analysis: A verandah, balcony or raised platform is not shown as part of the proposal.

(i) it relates to a dwelling or a microwave antenna; or

Analysis: The proposal does not relate to a dwelling or a microwave antenna, an email from the agent states that the building is for a home office.

(j) the capacity of the container would exceed 3,500 litres.

Analysis: The proposal does not relate to a container.

E.2 In the case of any land within the curtilage of the dwellinghouse which is within—
(a) an area of outstanding natural beauty;
(b) the Broads;
(c) a National Park; or
(d) a World Heritage Site,

development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

Analysis: The site is not within any of the above mentioned designations.

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

Analysis: The site is not situated on article 2(3) land (Conservation Area)

Interpretation of Class E

E.4 For the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

Analysis: The proposal as a home office which is a purpose incidental to the enjoyment of the dwellinghouse.

Recommendation

Issue a Certificate of Lawfulness for Proposed Development, the submission of a planning application for the works relating to Class E will not be required.

Reasons for Recommendation

The proposed single storey timber home office building in the back garden of 29 The Gardens, constitutes 'development' as defined by Section 55 of The Town and Country Planning Act 1990, but is permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Case Officer: Eve Hearsey Date: 28.09.2021

Authorised by: Peter Barnett Date: 28 September 2021