The Planning Inspectorate

Appeal Decision

Site visit made on 4 March 2019

by Megan Thomas Barrister-at-Law

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 19 March 2019

Appeal Ref: APP/Y3805/D/18/3218037
11 Flag Square, Shoreham-by-Sea, West Sussex BN43 5RZ

- 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 Nick Martin against the decision of Adur District Council.
- The application Ref AWDM/0486/18, dated 12 June 2018, was refused by notice dated 13 September 2018.
- The development proposed is "Remove current workshop. Replace with Garden Annex/ "Granny Annex" with provision for basic kitchen/bathroom facilities. Not for letting. Family use. Flat-roofed timber frame construction with horizontal timber boarded elevations (where visible) Concealed elevations plastic shiplap or similar. To conform with building regs for possible residential use by family with access/entrance via main dwelling."

Decision

1. The appeal is dismissed.

Main Issues

2. There are three main issues in the appeal; the effect of the proposal on the character of the local area, the effect on the living conditions of the occupants of 10 Flag Square with particular regard to outlook and noise, and whether the proposal would comply with national planning policy which seeks to ensure the proposal and its occupants would be safe from flooding.

Reasons

Character of the area

3. The appeal site is an end-of-terrace 3 storey dwelling on the east side of Flag Square at its junction with Beach Road. It is orientated broadly east-west and has a rear garden which is enclosed from Beach Road by a wall about 2m high. The eastern boundary of the garden is enclosed by a fence and is shared with the communal gardens of flats in Atlantic Court. There is a common boundary on the north with no.10 Flag Square, which is also a three storey property with a similar-sized rear garden.

4. The appeal proposal is for an outbuilding at the eastern end of the rear garden. It would be about 6.2 m deep along the northern boundary and it would step back with two recesses from the southern boundary. It would be about 6.5m wide along the eastern boundary. It would have a room with a kitchen area and a separate shower/WC room. It would have French or bi-fold doors and be about 2.5 high with a flat roof.

5. The accommodation in the new building would provide cooking facilities, sleeping and bathroom facilities.

6. An existing pedestrian gate out onto Beach Road from the rear garden is proposed to be relocated further west, so that access into the rear garden can continue to be obtained. It is possible to get access into the appeal site's rear garden through an existing lean-to structure on the southern side of the main dwelling, in addition to the gate in the southern boundary wall.

7. There is an existing shed/workshop in the rear garden against the eastern and northern boundaries. It has a pitched roof which is visible from outside the site. No.10 also has a garden building made of timber with a flat roof at the eastern end of its garden and adjacent to it a decked area with garden furniture.

8. The appellant states that "It is a fact that the existing shed/workshop is now dilapidated and so it will be replaced with a more useable garden room under the provisions of permitted development." He also states "The proposed room conservatively conforms to the requirements of what would be permitted development, were it not for the intended use." He also indicates that the use of the proposed building would be ancillary to the residential use of the main dwelling and would most likely be limited to one family member or an elderly relative.

9. Policy 15 of the Adur Local Plan 2017 'LP' indicates that the quality of the built environment should be of a high architectural quality and should respect and enhance the character of the site, and the prevailing character of the area, in terms of factors such as proportion, form, context, massing, siting, layout, density, height, size, scale, detailed design features and landscaping.

10. The proposed building would be large and would appear cramped in the context of the existing garden. I also agree with the Council that due to its scale and position it would be very apparent from the neighbouring gardens and Beach Road. Whilst there are other outbuildings in gardens, from my site visit I noted that they did not appear to be of the size proposed here or put to a use as a residential annex with day-to-day living facilities. The proposal would not be typical of the established pattern of development in the area.

11. The appellant has indicated that he intends to replace the existing garden shed and I have borne in mind that a building could be built under permitted development rights. However, there is no drawing or detailed description of what form a building built using permitted development rights would lawfully and realistically take in this case. Other than acknowledging the fact that an ancillary garden building can be up to 2.5m high if it is near the boundary, I do not have sufficient evidence before me on which to conclude that a legally valid fallback development would result in worse adverse impacts on the character of the area than the appeal proposal.

12. The Council has a Supplementary Planning Document '*Development Management Standard No.1 Space around New Dwellings and Flats'* which seeks to prevent overdeveloped layouts or excessive overall site coverage of buildings and hardsurfaced areas. This advice is not directly aimed at development of annex buildings in existing residential plots but nevertheless in so far as it discourages excessive overall coverage of curtilage land with hardsurfacing and buildings I have given it some weight.

13. Overall, on this issue, I conclude that the proposed development would unduly harm the character of the area and would be contrary to policy 15 of the LP.

Living conditions of occupants of 10 Flag Square

14. I am obliged to consider potential impacts on all future occupants of no.10 Flag Square not merely impacts on the current incumbent. The rear gardens of the terrace of dwellings on this side of Flag Square are relatively modest in size in comparison to the 3 storey houses which they serve, and they are quite narrow. Whilst the proposed building would step back slightly from the common boundary with no.10 Flag Square, it would nevertheless be about 6.2m in depth and would be visible above the existing fence. Given the narrowness of the garden of no.10 the height and depth of the proposal would result in an unacceptable sense of enclosure for the occupants of no.10 when on the decked area of the garden.

15. In coming to this view, I have borne in mind that the appellant intends to use permitted development rights to replace the garden shed. As I have said above in relation to impacts on the character of the area, there is no drawing or detailed description of what form a building built using permitted development rights would lawfully and realistically take in this case. Other than acknowledging the fact that an ancillary garden building can be up to 2.5m high if it is near the boundary, I do not have sufficient evidence before me on which to conclude that a legally valid fallback development would result in worse adverse impacts on the living conditions of the occupants of no.10 Flag Square than the appeal proposal.

16. The Council has also raised the issue of noise and disturbance from the proposal affecting the occupants of no.10 Flag Square. Given the close proximity of the proposed annex to the boundary of no.10, and given its proposed provision of cooking, sleeping and bathroom facilities, and its ability to be accessed independently from the main dwellinghouse, I consider that there would be an unacceptable impact on the enjoyment of the garden at no.10 through unacceptable increased noise and disturbance from the proposal. In coming to this view I have borne in mind the use of permitted development rights but this does not affect my conclusion.

17. Consequently, on this issue, I conclude that the proposed development would result in unacceptable living conditions for the occupants of no.10 Flag Square by reason of unacceptable loss of outlook and undue noise and disturbance. The proposal would conflict with policy 15 of the LP.

Potential flood risk

18. The National Planning Policy Framework 'NPPF' sets strict tests to protect people and property from flooding including tidal/sea flooding and indicates that where these tests are not met new development should not be allowed. Paragraph 155 of the Framework states that: "Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere."

19. Policy 36 of the LP indicates that all development involving a more vulnerable use in Flood Zones 2 and 3 will need a site specific flood risk assessment 'FRA'.

A 'more vulnerable' use includes a residential use and so, as the annex may be used as sleeping accommodation, the proposal needs a site specific FRA.

20. The policy also requires that any site specific FRA needs to demonstrate that development is appropriately flood resilient and resistant, includes safe access and escape routes where required, and that any residual risk can be safely managed, and will be safe for its lifetime taking account of the vulnerability of its users.

21. The Environment Agency's Flood Map for Planning (Rivers and Sea) indicates that the proposed development is located in Flood Zone 3 (High Risk) which means, amongst other things, land having a 1 in 100 or greater annual probability of river flooding or land having a 1 in 200 or greater annual probability of sea flooding.(Land shown in dark blue on the Flood Map). The appellant asserts that the inclusion of the site in zone 3 is a quirk of the Flood Map and does not reflect the reality of a brick wall and the line that water would have to follow on the ground. He has, nevertheless, submitted his own site specific Flood Risk Assessment. I have considered the Flood Map and the points made by the appellant, however, I take a precautionary approach and I am not persuaded that the site should be treated as in any category other than flood zone 3.

22. The question then arises how the development can be made safe from the predicted flooding event. The appellant has suggested that the gates are the only points of entry for water to the rear garden and 60cm high boards over gate openings could be affixed if an extreme weather event occurs. I am not convinced that the gates are the only point of entry of water to the rear garden but nevertheless the proposed boards would not provide a secure or a year round solution to potential flooding. The Environment Agency's reply to consultation on the planning application indicates that it would expect finished floor levels for the annex to be set at least 300 millimetres above ground levels. These are not shown on the submitted plans and I do not consider this could be required by imposing a planning condition because this might require further major alterations to the submitted plans.

23. On this issue, I conclude that the proposal would not comply with national planning policy which seeks to ensure the proposal and its occupants would be safe from flooding. It would be in conflict with policy 36 of the LP.

Conclusion

24. Having taken into account all representations made, for the reasons given above, I dismiss the appeal.

Megan Thomas

INSPECTOR