

## DEVELOPMENT CONTROL BOARD

19 May 2022

**Reference:** 20/00606/FUL **Officer:** Abigail Lavery

**Location:** 21 Longfield Avenue  
Longfield  
Kent  
DA3 7LE

**Proposal:** Use of existing detached single storey outbuilding as an annex ancillary to the main dwellinghouse (retrospective application)

**Applicant:** Mr. S. Gill

21 Longfield Avenue  
Longfield  
Kent  
DA3 7LE

**Parish / Ward:** Longfield And New Barn / Longfield, New Barn & Southfleet

### RECOMMENDATION:

Approval

### SITE DESCRIPTION

(1) The application site is located on the northern side of Longfield Avenue opposite the junction with Poplars Close and comprises a two storey detached house and its residential curtilage. The site area is some 1500 square metres and includes a front lawn and driveway area and a long rear garden. The front (southern) boundary is bordered by high and fairly dense vegetation, behind this lies the front driveway. There is also a driveway to the western side of the house which leads to a detached garage at the rear. To the rear of the site is a large garden with a depth in the region of 38 metres containing a detached outbuilding at its far rear boundary. This is the outbuilding which is the subject of this planning application. The land across the site is fairly even and flat.

(2) The site has a total depth of around 78 metres and a width in the region of 20 metres. It has 6 immediate neighbours which share boundaries with the site. No.23 Longfield Avenue, to the east, is a detached property which sits on a similar building line as the house at No.21, also facing south onto Longfield Avenue. No.14 Birch Close sits directly behind (to the north of) No.23 Longfield Avenue and borders the application site's rear garden to the east and also wraps around its rear boundary to the north. The western boundary is bordered by 4 properties; No.19 Longfield Avenue and Nos. 2, 4, 6 and 12 Birch Close. No.19's front elevation faces south but the dwelling sits far forward of No.21's building line, the rear boundaries of Nos. 2, 4 and 6 Birch Close each border No.21's western (side) boundary and 12 Birch Close's eastern (side) boundary borders the western (side) boundary. Birch Close was an infill development of the 1960s built after much of this section of Longfield Avenue hence the somewhat atypical arrangement whereby Nos. 12 and 14 Birch Close lie either side of the far rear section of the application site's rear garden.

(3) The lawful use of the entire site is residential and it is located in the predominantly residential area of New Barn which is an Area of Special Character (ASC, policy DP2). Longfield Avenue consists largely of detached single and two storey dwellings and it has a distinctly sylvan character.

## THE PROPOSAL

(4) The application is retrospective and the outbuilding is already in situ and in use. Planning permission is sought for retention of the outbuilding and its use as an annex ancillary to the main dwellinghouse.

(5) The building has a flat roof with a height of approximately 2.4 metres, a depth of approximately 6.1 metres and a width of approximately 18.6 metres. Its front elevation faces south and contains 1 set of patio doors and a single door, 3 windows and a set of bi-fold doors. Its rear elevation faces north towards the rear boundary and contains 4 windows and a door. Neither side elevation has any doors or windows. The building spans almost the full width of the garden and lies within a metre of each of the site's rear and side boundaries. Internally the building contains 2 bedrooms, 2 bathrooms, a gym/office room and a lounge/kitchenette. Its gross internal floor area is approximately 98 square metres.

(6) The statement submitted with the application indicates that the building will be used by family members in connection with the main dwelling. When the building was erected its initial use was intended to provide care for the applicant's elderly parents so that they could be close to the applicant and be supported by them. The statement also indicates that the building will remain reliant on the services and facilities of the main house. The statement goes on to say that "the outbuilding is only intended for ancillary use to the main dwellinghouse now and in the future under a different occupancy should that arise".

(7) The building itself was granted a lawful development certificate in 2019 (18/01599/LDC) under Class E of the General Permitted Development Order (GPDO) as an outbuilding of this size and scale can be constructed lawfully as permitted development. This is development which does not require formal planning permission however there is a need for any outbuilding to be for purposes which are incidental to the enjoyment of the dwellinghouse which means that it cannot contain primary living accommodation. However, upon completion, the building was occupied as a residential annex containing primary living accommodation that is ancillary to the main dwelling. Consequently both the building and the use now require planning permission. Ancillary residential accommodation is not considered to be an incidental use. It is key to note that if the building had first been occupied as an incidental use i.e. one not consisting of primary living accommodation but had later been converted to an annex then this would also not have required consent as this would not constitute a material change of use. Planning permission is required for the erection of the building as a result of its use, upon completion, as an annex without any intervening use.

(8) The description of development refers only to the use of the building however the effect of granting permission for the application will be to grant consent for the use of the building which is in situ. Consequently, even if the description were to be amended to include reference to the erection of the building, this would have no material impact to the actual development permitted on the site. The description of development has not been amended as the agent and applicant were not amenable to a change of description and the Local Planning Authority cannot amend the description without agreement.

## RELEVANT HISTORY

(9) 18/01599/LDC - In 2019 a lawful development certificate was granted for the proposed erection of a single storey detached outbuilding in the rear garden.

The elevation drawings submitted with the lawful development certificate are the same as those submitted with the current application.

(10) 12/01135/FUL & 12/00605/FUL- In 2012 planning permission was granted for the erection of a part two/ part single storey side extension together with rear dormer. A second application was approved the same year which amended the earlier scheme.

(11) 90/00627/FUL - in 1991 planning permission was granted for the erection of a two storey side/rear extension and a conservatory

(12) 87/00165/FUL - in 1987 planning permission was granted for the construction of a new roof with dormer windows

#### COMMENTS FROM ORGANISATIONS

(13) KCC Highways - based on the description of development the proposal does not meet the criteria to merit their involvement

(14) Kent Fire Brigade - advise that the details supplied for access and facilities appear to meet the requirements of the Approved Document B (Fire Safety) 2019 Vol: 1 Dwellings B5 Section 13.

(15) Environmental Health - no adverse comments or observation regarding the application as the intended use is unlikely to affect neighbouring properties.

(16) Longfield and New Barn Parish Council - object to the application owing to concerns relating to the building's use as a separate dwelling and its future use. They also highlight neighbour's concerns in relation to noise and access. They lastly state that this constitutes unacceptable backland development.

#### NEIGHBOUR NOTIFICATION

(17) Neighbours were consulted on the application on the 4th of June 2020. In response to this 8 letters of objection were received from neighbours and nearby residents from a total of 5 different addresses. One letter of support was also received from a neighbour. The objections are summarised as follows:

- Reference to the lawful development certificate of 2019 in terms of the fact that the original intention of the applicant was not to construct a "games room, gym, massage and wet room" and a query as to whether the building was actually constructed as a dwelling for residential occupation
- Impact to nearby trees
- Concern about future independent use of the building
- Cooking smells from the building
- Disturbance due to proximity to houses on Birch Close
- Current independent use of the building in terms of allocated garden space, refuse bins, washing line, cooking and garden furniture
- Location of building close to Birch Close and possible future access opening into this road
- Precedent for back land development
- Unsightly and out of keeping
- Attempt to bypass planning regulations

(18) Comments were also made in relation to restrictive covenants on the land which are not material planning considerations in this case.

(19) The letter of support was received from a neighbour and is summarised as follows:

- The building has been constructed to the overall size of the original lawful development certificate and therefore its internal layout has no impact upon the surrounding properties
- There is no noticeable encroachment upon the enjoyment of their property
- Socialising in the garden appears to have been limited to family members and future socialisation is expected to be no different than that occurring in gardens of other homes in the neighbourhood
- Consideration that the impact to trees would have been considered previously with the original application

## RELEVANT POLICIES

(20) The Dartford Core Strategy 2011, the Dartford Development Policies Plan 2017 and the Kent Minerals and Waste Local Plan 2016 form the Dartford's Development Plan and the application should be determined against this unless material considerations indicate otherwise.

(21) Adopted Dartford Core Strategy adopted 2011

(22) Adopted Dartford Development Policies Plan 2017

DP1: Presumption in favour of sustainable development

DP2: Good Design

DP5: Environmental and amenity protection

DP7: Borough housing stock and residential amenity

(23) Dartford Local Plan to 2037 - Draft Document September 2021 (The policies in the draft Plan are now a material consideration in the determination of planning applications but currently carry only limited weight)

The relevant Policies are:

M1 (Good design for Dartford),

M2 (Environmental and amenity protection)

M11 (Residential extensions, new dwellings and garden land)

(24) Dartford Parking Standards Supplementary Planning Document 2012

(25) The National Planning Policy Framework is also a material consideration.

## COMMENTS

### Key Issues

(26) The key issues relate to; the principle of development in terms of the provision of an ancillary annex in this location; impact to existing residential amenity; impact to the character and appearance of the site and wider area.

### Principle of development

(27) The annex is located in the rear garden and accessed via the main house or via the driveway to the western side of the house. It is occupied by relatives of the occupants of the main dwelling at 21 Longfield Avenue.

(28) The use of the annex is residential, which is the current lawful use of the site. As such, in principle, this is an appropriate use for the site. The building contains bedrooms, bathrooms and a kitchen/living area. These facilities alone could potentially mean that this unit has the capacity to function independently of the main house and this is a concern which has been raised by neighbours. However, case law has provided clarification in respect of what can be termed ancillary in relation to the function of a detached annex. In the case of *Whitehead v The Secretary of State for the Environment and Another* (1991) the Judge considered "It matters not, in my judgment, whether this building, as converted, happened to include its own kitchen or bathroom." But he instead considered primarily the proposed use of the building, which in the above case was for use by a housekeeper therefore the function of this building was ancillary to the main house as the housekeeper would live on site in order to look after the house. In the case of the current application, the parents of the applicant, who are elderly, live in the annex so that they can be looked after by the family and spend time with them. This has

been detailed in a supporting statement to the application and it is clear that this function is an ancillary use.

(29) Also of relevance is *Uttlesford DC v SoS and White 1992*, in which a garage attached to a dwelling had been converted to a 'granny annexe'. An inspector had determined that where a domestic garage within a residential curtilage was used for living accommodation in connection with the dwelling, no material change of use had occurred. The court agreed, ruling that the fact that the elderly occupier of the annexe had living facilities that enabled her to live independently from the rest of the family did not amount to the creation of a separate planning unit that required permission. The significance of this case is that even though accommodation in the garage was capable of independent use, the court judgment suggested that a quality of separateness was occupation by someone who was not connected with the family occupation of the whole planning unit. Again, in this case it has been made clear that the occupiers are related to the applicant and that their day to day existence will relate to the main dwelling. There will be a functional link between the building and the main house by virtue of the specific use and occupancy by family members.

(30) The above case law also indicates that the conversion of a garage building to living accommodation in connection with an existing dwelling does not amount to a material change of use. This further highlights that, if the outbuilding had been erected and first occupied as a use incidental to the main dwelling such as a gym, garage, games room or other such use, then its subsequent conversion to an annex/ primary living facilities would not have been a material change of use requiring planning permission. Owing to the fact that there was no intervening use prior to the annex use, the erection and use of the building requires planning permission as a whole.

(31) As the above case law examples have indicated, the specific occupancy of a detached annex is fundamental in terms of whether the use is considered to be ancillary. In order to be deemed ancillary there should also be an element of subordination, in land use terms, between the annex and the main dwelling with which it is associated. No.21 Longfield Avenue is a large detached house with 5 bedrooms, 4 bathrooms, a lounge, separate dining room and a large kitchen. The front and side driveway can comfortably accommodate around 6 cars and there is a long detached garage to the western side of the plot. The annex building spans almost the full width of the garden but, owing to the significant length of the lawn, it does not intrude into this space in a way that detrimentally reduces the amenity space. Owing to the mixed scale of development in the area the annex is comparable in scale to some of the houses in the vicinity of the site however 21 Longfield Avenue is a large detached house and the consideration of subordination relates to the main dwelling and not to neighbouring sites. I consider that the provision of a residential annex of this scale is acceptable on this site given the scale of the main dwelling and the site itself.

(32) The building will be located towards the rear of the garden and the plans do not indicate any severance of curtilage or separate amenity space for the building. I also consider that the circumstances of this case and the location of the building, that is without an option of separate access to the north, do not lend itself to future separation. I will also include an informative to advise the applicant that the use of the building independently of the main dwelling would amount to a material change of use requiring planning permission.

#### Residential amenity

(33) The building is located at the far rear of the application site's rear garden. Given the position of dwellings on Birch Close in relation to the site Nos 12 and 16 Birch Close sit on a similar building line close to the annex building. These are the closest neighbours to the building itself. In terms of its external physical dimensions the building is the same as that which was granted a lawful development certificate in 2019 (18/01599/LDC). A building of this size could be constructed in the same location without the need for planning consent. The building's low height of around 2.4 metres does not result in harm to neighbour amenity in terms of loss of light, overbearing or loss of privacy. The windows in the building face south over the site's rear garden and north towards the rear boundary fence. To the other side of the fence lies No.16

Birch Close's detached garage, vegetation and a lawn area. I note that views from the windows are also sufficiently obscured by boundary treatment on the side and rear boundaries.

(34) The use of the building is residential in connection with the existing dwellinghouse and is therefore appropriate in principle. Neighbours have raised concerns in relation to disturbance such as noise and food smells from the building. These are activities that one would expect to find at a residential house by virtue of normal day to day existence. If noise or odours are excessive at a residential property then neighbours can contact the Environmental Health department can investigate this under their own separate legislation. However, I do note that the Environmental Health department have stated, in response to consultation that they have no adverse comments or observations regarding the application as the intended use is considered unlikely to affect neighbouring properties.

(35) The provision of an annex at a residential dwelling will result in some impact to the amenities of neighbouring residents however I do not consider that, in this case, the level of impact would be harmful. The annex contains only typical residential uses and as such I have no grounds to believe that these would have an unacceptable impact on surrounding residential uses given that these uses are already present in the main house. I do accept that the annex is fairly close to the properties on Birch Close however the building is a fairly substantial construction which should contain noise to a suitable degree. As stated above, Environmental Health legislation is the appropriate means for controlling any disturbance created from a residential unit. There is no basis in planning legislation or the Council's policies to assume that a single residential annex would result in unacceptable noise as disturbance, which is the test required by Policy DP5.

#### Character and appearance

(36) The site is within an Area of Special Character (ASC) which is an area of greater sensitivity in terms of soft landscaping, trees, breaks between houses and character of the established residential neighbourhood. The building is located to the rear of the garden, has a low height and is well screened by vegetation to the eastern side and rear boundary as such the visual impact to the character of the area is limited by virtue of its lack of visibility.

(37) The design of the building is fairly typical of a garden outbuilding, it does have a fairly large footprint but this is sufficiently contained within the plot which itself is quite expansive. Based on the drawings of the building alone the building does appear quite large, however due to the size of the plot the building sits quite logically at the rear of the garden without appearing to dominate the site. The building is also constructed of reasonably high quality materials.

(38) Neighbours have raised concerns in relation to the impact to nearby trees. There are no protected trees in close proximity to it and at the time of the site visit which took place prior to the erection of the building there were no trees identified on site which were deemed worthy of protection. There is still dense vegetation to the front of the plot and to the rear and side boundaries, as such it is not considered that the provision of the building has adversely affected the sylvan character of the area.

#### Other issues

(39) Neighbours and the Parish Council have raised concerns about the proposal being back land development. I do not consider that the provision of an annex building ancillary to a main dwelling constitutes back land development as it is not to be used as a separate dwelling.

#### HUMAN RIGHTS IMPLICATIONS

(40) I have considered the application in the light of the Human Rights Act 1998. I am satisfied that my analysis of the issues in this case and my consequent recommendation are compatible with the Act.

#### PUBLIC SECTOR EQUALITY DUTY

(41) Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

#### ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

(42) In relation to the Town and Country Planning (Environmental Impact Assessment Regulations) 2017) the proposal is not Schedule 1 or Schedule 2 development. It is not considered to require a screening opinion.

#### FINANCIAL BENEFITS

(43) Under section 75ZA of the Town and Country Planning Act officer reports to the Development Control Board are required to include a list of 'financial benefits' which are likely to be obtained by the authority as a result of the development. A 'financial benefit' must be recorded regardless of whether it is material to the Council's decision. Government advice is that the decision maker should consider whether it is a material consideration in the consideration of a planning application.

(44) In this particular case the following are the 'financial benefits' which I am aware of:

Community Infrastructure Levy: CIL is charged on the net increase in floorspace of the proposed development and in this case a chargeable area of 98 square metres results in a CIL liability of £27,226.78 which subject to indexation will be paid on implementation. As Members are aware the CIL money achieved from developments goes into a pot and must be used to fund infrastructure to support development in the area, this includes new schools and strategic junction improvements where the money will be paid to the authorities responsible for providing these services. [In addition 15 % of the CIL payment will be passed to Longfield and New Barn Parish Council in accordance with CIL Regulations.] I consider that this is a material consideration with regard to this proposal, as if the development were to commence, CIL monies received will assist in the delivery of infrastructure projects that supports local development.

(45) New Homes Bonus: is a grant paid by central government to local councils to reflect and incentivise housing growth in their areas. It is based on the amount of extra Council Tax revenue raised for new homes. Allocations are set by Government each year and so the amount of New Homes Bonus is not fixed for this proposal. I consider this is not a material consideration with regard to the determination of the planning application.

#### CONCLUSIONS AND REASONS FOR RECOMMENDATION

(46) I have reviewed this retrospective application in light of the relevant policies of the adopted local plan, neighbour representations, case law and other material considerations. Following careful review of these factors I have concluded that this is an acceptable form of development in principle which does not give rise to unacceptable material impacts.

#### **RECOMMENDATION:**

Approval subject to conditions:

01 The development shall be carried out in accordance with the following plans and documents:

DA37LE-2020-BP rev 1.1

DA37LE-2020-EP rev 1.3

DA37LE-2020-SP rev 1.1

01 For the avoidance of doubt and to ensure a satisfactory form of development.

- 02 Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), no fences, walls or other means of enclosure shall be erected within the rear garden of the application site.
- 02 In order to prevent the formation of an independent unit which would give rise to an over intensive use of the site and in order to prevent harm to neighbour amenity in accordance with policy DP5 and DP7 of the adopted Dartford Local Plan.

### **INFORMATIVES**

- 01 The applicant is advised that the application is approved on the understanding that the occupation and use of the annex building hereby permitted is to be ancillary to the occupation and use of the main dwelling as a family dwelling unit. If the unit is used independently of the main dwelling then this would constitute a material change of use requiring planning permission. Planning permission is not likely to be forthcoming for the use of the building as a separate unit as this would be an over intensive use of the site.



<b>Application No.:</b>	20/00606/FUL
<b>Address :</b>	21 Longfield Avenue Longfield Kent DA3 7LE
<b>Date:</b> 5 May 2022	<b>Scale:</b> Not to Scale