
Appeal Decision

Site visit made on 27 September 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 17 October 2016

Appeal Ref: APP/K0235/W/16/3154325

24 Bedford Road, Wilstead, Bedford, Bedfordshire MK45 3HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Drummond against the decision of Bedford Borough Council.
 - The application Ref 16/01052/FUL, dated 14 April 2016, was approved on 9 June 2016 and planning permission was granted subject to conditions.
 - The development permitted is extensions and alterations to garage.
 - The condition in dispute is No 3 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) the extended building hereby permitted shall be limited to use as a garage with residential storage above and at no time shall be used as a separate unit of accommodation."*
 - The reason given for the condition is: *"For the avoidance of doubt, to enable the Local Planning Authority to exercise control over future use of the building, to ensure a satisfactory standard of development, to safeguard the amenities of the adjoining occupiers (and others) and to ensure the proposal complies with 'saved' Policy BE30 of the Bedford Borough Local Plan 2002 and Policy CP21 of the Core Strategy and Rural Issues Plan 2008."*
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Decision

1. The appeal is allowed and the planning permission Ref 16/01052/FUL for extensions and alterations to garage at 24 Bedford Road, Wilstead, Bedford, Bedfordshire MK45 3HW granted on 9 June 2016 by Bedford Borough Council, is varied by deleting condition 3 and substituting it with the following condition:

No windows or doors shall be constructed on the south east elevation of the garage facing No 20-22 Bedford Road.

Application for costs

2. An application for costs was made by Mr Drummond against Bedford Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The site address on the original application form differs slightly from the fuller one given by the Council on their decision notice. In the interests of consistency I have used the one employed by the Council in the heading above and in my decision.
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Background and Main Issue

4. The planning permission for extensions and alterations to an existing detached garage included a condition removing permitted development rights for the use of the extended building effectively limiting its use as a garage with residential storage above, thereby preventing other uses associated with the dwellinghouse. The Council considered the application on the basis that it would be an ancillary or incidental use to the main dwelling but addressed the Parish Council's concern that the extended building could be used as primary living accommodation by the imposition of the condition.
5. The Council's statement explains that the effect of the condition would be to bring any use of the building as a residential annexe, which depending on the nature of accommodation provided may otherwise not require planning permission, under planning control, so such a proposal could be considered on its merits. They consider such a use could be potentially harmful to the amenity of neighbours. The appellants object to the condition which they consider is not necessary and therefore would not meet the tests¹ set out in the National Planning Policy Framework (the Framework) with which conditions must comply.
6. In light of the above, the main issue is whether the condition is necessary in terms of the effect of the development would have on the living conditions of occupiers of neighbouring dwellings.

Reasons

7. The garage faces the front of the host property with an intervening forecourt and is separated from Bedford Road by a hedge. A drive and an area of garden separate the gable of the adjoining residential property, 20-22 Bedford Road, from the boundary with No 24 beyond which the nearest of the extensions would be situated.
8. The Framework² states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. Furthermore the Planning Practice Guidance (PPG) advises³ that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.
9. The condition includes both a specific reference to permitted uses (garage with residential storage) and an explicit omission of use as a "separate unit of accommodation". This phrase is ambiguous as to whether it refers to the creation of an independent dwelling and planning unit or accommodation (which may include habitable or living space) which may be physically separate from the dwelling but not an independent dwelling as such forming a residential annexe within the same planning unit as the main dwelling.
10. The use of the building as a separate, self-contained dwelling would clearly require planning permission and as such a condition would not be necessary to make this clear, even for the avoidance of doubt. However, the extended building would be of a size, appearance and configuration which could

¹ Paragraph 206.

² Paragraph 200.

³ Paragraph: 017, reference ID: 21a-017-20140306.

reasonably accommodate habitable space as such an annexe or a range of domestic activities other than purely storage. The effect of the condition would also be to prevent such uses taking place without permission.

11. The Council have raised a number of issues which they consider could arise should the building be used as a residential annexe. These issues include noise and disturbance, subdivision of the plot, parking and additional traffic, the last two concerns are shared by the occupiers of No 20-22.
12. However, these are generalised concerns and I have been presented with very little substantive evidence to suggest what actual material harm in these respects would arise should the building be used for purposes other than garaging and storage including as a residential annexe.
13. The combination of the loss of existing parking spaces within the garage and the potential increase in the number of cars kept at the property which may result if the building were used as an annexe, could increase the demand for parking space within the site. However, there is little evidence that additional parking could not be provided within the site nor that, were there any additional traffic, that this would necessarily lead to any harm to any neighbours' living conditions or highway safety.
14. In these respects it has therefore not been demonstrated that the condition would be necessary. However, the Council's statement does raise the more specific concern that, given the proximity of the extension to the boundary with No 20-22, any new windows which may be inserted into the building could lead to overlooking from space used for domestic activities with a consequent loss of privacy. From my observations when visiting the site No 20-22 has two small windows in the flank elevation facing the appeal site, although it is unclear whether these serve habitable rooms. Whilst the intervening existing boundary treatment and planting with the garden of No 20-22 would be likely to limit any harm from windows in the ground floor of the proposed gable of the extension, there is no guarantee such screening would remain unchanged.
15. Although the appellant states that the proposed extension would be single storey, the drawings indicate a first floor storage area in the extension nearest No 20-22 which would adjoin that which already exists. The first floor element of the extension might have limited headroom, however if used for domestic activities a window in the gable could give rise to harmful overlooking as a result of its elevation, orientation and proximity to the neighbouring property.
16. The likelihood of a combination of a more intensive use of the building coupled with the insertion of windows in the gable may not necessarily be great. However, should they occur the results would lead to material harm to the neighbours' living conditions. Nevertheless, whilst the restriction on use of the extended garage goes beyond what would be necessary to avoid such harm, exceptionally these circumstances would mean that a condition restricting any new windows or doors would ensure that their location, design and detailing could be considered if proposed in the future.
17. Such a condition has been explored with the parties and I have taken their views into account in reaching my decision. This would be necessary to ensure that any materially harmful effects on the living conditions of the occupiers of No 20-22 as a result of a loss of privacy from overlooking could be avoided. This would be a more proportionate approach than limiting the use of the

building. The insertion of new windows into other elevations would be unlikely to result in material harm to neighbours' living conditions.

18. Such a variation would ensure that the proposed development would comply with Bedford Borough Local Plan (2002) saved Policy BE30 which requires development to have regard to factors which might give rise to disturbance to neighbours, amongst other criteria. However, Bedford Borough Council Development Plan Document Core Strategy & Rural Issues Plan (2008) Policy CP21 is concerned with high quality design and is less pertinent to considering the effect of the proposed development in respect of its effects on neighbours' living conditions.

Conclusion

19. For the above reasons I conclude that the condition does not pass the Framework test of necessity. However it is necessary to attach a condition to restrict any windows or doors which could lead to harmful overlooking. As such the appeal succeeds and the planning permission is consequently varied as set out in the formal decision.

Geoff Underwood

INSPECTOR