
Appeal Decision

Site visit made on 21 November 2016

by P N Jarratt BA DipTP MRTPI

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

Decision date: 22 November 2016

Appeal Ref: APP/X1118/C/16/3145626

29 Ashleigh Road, Barnstable, Devon, EX32 8JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms Jane Sugars against an enforcement notice issued by North Devon District Council.
 - The enforcement notice, numbered ENF 9361, was issued on 2 February 2016.
 - The breach of planning control as alleged in the notice is the unauthorised material change of the former garage/workshop shown edged blue on the location plan attached to the notice into a separate self-contained unit of residential accommodation under Section 171B(3) of the Act.
 - The requirements of the notice are:
 - 1) Cease the separate residential use of the former garage/workshop shown edged blue on the location plan attached to the notice.
 - 2) Remove the kitchen facilities from the former garage/workshop shown edged blue on the location plan attached to the notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of Decision: Appeal dismissed, enforcement notice upheld and planning permission refused.**
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Preliminary matters

Relevant Planning History

1. A retrospective application for the conversion of the garage/workshop to a guest annexe was refused in April 2015 on the grounds of it being out of character with the surrounding area, its relationship with No 29 Ashleigh Road and its effect on residential amenities. The proposed development was considered not to accord with Policies DVS1 and DVS3 of the Adopted North Devon Local Plan, the National Planning Policy Framework (the Framework) and Policy DM25 of the emerging Local Plan.

The appeal site and its surroundings

2. The appeal property is a detached dwelling with a separate single storey building between the highway and the dwelling. This building was formerly a garage/workshop which has been converted into a small independent dwelling comprising of a bed sitting room at the front and a shower room and kitchen to the rear. There is a parking area for No 29 Ashleigh Road for 2 vehicles to the front of the property. To the side is a path providing pedestrian access to No 29.
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3. At the time of my site inspection the converted garage/workshop was furnished but not occupied and the kitchen fittings had been disconnected.
4. The property is located in an established residential area in which there are a range of property sizes and types. There are on-street parking restrictions on the surrounding roads where resident parking permits are required.

The appeal on ground (a) and the deemed planning application

Main issues

5. The main issues in this appeal are the effects of the change of use on the living conditions of the occupiers of the properties and the effects on the character and appearance of the area.

Reasons

6. The appeal building has windows at the rear overlooking the garden and windows of No 29. The separation distance is such that issues of mutual overlooking and loss of privacy for both properties could arise. Although this could potentially be overcome through the imposition of a condition requiring these windows to be obscure glazed and fixed shut, this would result in unsatisfactory living conditions and require artificial ventilation of the kitchen and shower room. There is a window on the side elevation of the appeal building adjacent to the access to No 29, although this does not appear to create any privacy issues.
7. The parking area is located directly in front of the appeal building and the use of this area by the occupier of No 29 would potentially create a disturbance to the occupier of the appeal building through the starting of vehicles and the opening/shutting of car doors. Additionally, the parking of vehicles not belonging to the occupant of the appeal building could affect the outlook from their main front window of the building.
8. There is no external amenity space attached to the appeal building although the appellant states that an area to the rear of the building and within the garden of No 29 could be provided. However such an arrangement would lead to a poor layout as the appeal building would not have direct access to such a space.
9. I conclude on the first issue that the use of the appeal building as an independent unit of living accommodation would adversely affect the living conditions of the occupiers of both the appeal building and of No 29.
10. Turning to the second issue, the appellant states that the principle of the change of use should be acceptable due to other houses in the area being converted into flats/bedsits. Whilst the appellant pointed out two nearby buildings that were said to have been converted, these were very substantial buildings and not minor outbuildings. The change of use of the appeal building, whilst being in a residential use, would be out of character with the surrounding area by virtue of its small scale, relationship with other properties and lack of external amenity space. No evidence has been presented to indicate that the conversion (if any) of secondary and minor outbuildings has taken place such that the use of much smaller buildings contributes to the character of the area and I consider that any such changes would be harmful to the area's character.

Other considerations

11. The appellant has suggested that a condition could be imposed to tie the use of the appeal building as an annexe to No 29. However, such a condition was suggested by the appellant at the time of the refusal of permission for the guest annexe in April 2015. I am unaware whether there have been any changes in circumstances since that time other than that the emerging North Devon and Torridge Joint Local Plan has moved closer to examination and adoption. Policy DM25 refers to the need for annexe accommodation being physically attached to the main house and commensurate to the needs of the intended occupants, and to be achieved without harm to amenity or local character considerations. As the Joint Local Plan has not yet reached the stage of adoption, I attach less weight to it than to the saved policies. However, as there is no identified need for the accommodation, and as it would alter the character of the area and impact on living conditions, the tying by condition of the annexe to No 29 would not overcome these issues.
12. Concern has been expressed that if used as an annexe, this could lead to an increased use of the parking area with additional reversing of vehicles onto the highway, with potential highway safety issues. However, as the existing two space parking area exists, and its use is not limited, then I do not consider that this would lead to any increased highway safety risks.
13. The appellant considers that the use of the appeal building as habitable accommodation is more socially acceptable than its previous use as a plumber's workshop/store which led to parking issues. Whilst this may be the case, it would not overcome the harm I have already identified.
14. I conclude that the development is contrary to saved Policies DVS1 and DVS3 of the North Devon Local Plan regarding design and amenity considerations and to paragraph 64 of the Framework relating to design. It is also contrary to Policy DM25 of the emerging Local Plan albeit that I attach less weight to it than to the saved policies.
15. For the reasons given and having had regard to all relevant considerations the appeal on ground (a) fails.

The appeal on ground (f)

16. The appellant considers that an appropriate lesser step would be to tie the use to 29 Ashleigh Road as the enforcement action would result in the occupant becoming homeless. However, as the previous occupant is no longer resident at the appeal property, this does not provide justification for the requirements of the notice being considered excessive. Furthermore, the allegation is against the use of the appeal building as an independent unit of accommodation and tying the use to No 29 is a matter considered in ground (a).
17. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach.
18. The appeal on this ground fails.

The appeal on ground (g)

19. The appellant considers that a period of 12 months is necessary to find suitable accommodation for the occupant in view of his health and other personal circumstances. As the occupant has now moved on and the appeal building is not currently tenanted, I consider that the compliance period is more than adequate for the appellant to carry out the necessary steps for compliance. The appeal on this ground does not succeed.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal decision

21. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

P N Jarratt

INSPECTOR