
Appeal Decision

Site visit made on 12 December 2016

by Grahame Gould BA MPhil MRTPI

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

Decision date: 19th January 2017

Appeal Ref: APP/M1595/W/16/3159765

Westfield, Recreation Avenue, Corringham, Essex SS17 9BZ

- 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 A Freeman against the decision of Thurrock Borough Council.
 - The application Ref 16/00740/FUL, dated 16 May 2016, was approved on 25 July 2016 and planning permission was granted subject to conditions.
 - The development permitted is utilisation of garden shed/hobby room/garage for age dependant relative accommodation.
 - The conditions in dispute are Nos 2 and 3 which state that:
 - (2) The outbuilding hereby permitted shall be occupied solely by Mrs Norah Jones and no other person(s) whatsoever. At such time as Mrs Norah Jones ceases to occupy the building all facilities which allow the building to be occupied separately to the main dwelling shall be removed, in accordance with a scheme of details which must be submitted to the Local Planning Authority with THREE (3) MONTHS of the date of this decision. Thereafter, the works to return the building to a use incidental to the main dwelling shall take place within THREE (3) MONTHS of the date at which Mrs Norah Jones ceases to occupying the building.
 - (3) At such time as Mrs Norah Jones ceases to occupy the building the dividing fence in the garden between the main house and outbuilding shall be removed.
 - The reasons given for the conditions are:
 - (2) In the interest of the amenity of neighbouring occupiers and to prevent formation of an additional residential unit.
 - (3) In the interests of visual amenity and to ensure that the proposed development is satisfactorily integrated with its surroundings in accordance with Policy PMD2 of the adopted Thurrock LDF Core Strategy and Policies for the Management of Development DPD [2011].
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Decision

1. The appeal is allowed and the planning permission 16/00740/FUL for the utilisation of garden shed/hobby room/garage for age dependant relative accommodation at Westfield, Recreation Avenue, Corringham, Essex SS17 9BZ granted on 25 July 2016 by Thurrock Borough Council, is varied by deleting condition 2 and substituting for it the following condition and deleting condition 3:
 - 1) The accommodation hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Westfield.

Background and Main Issues

2. The planning permission permits the outbuilding to the rear of Westfield to be occupied as 'age dependent relative accommodation', although the planning
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permission does not define what is meant by that phrase. However, it appears that the appellant and the Council have considered the development as being for an annexe that would be ancillary to Westfield's residential occupation. I have therefore determined the appeal on that basis. For ease of reference hereafter I shall use the term annexe to refer to the permitted accommodation.

3. At the time of my site visit the annexe was unoccupied and it comprised a kitchen (with cooker, fridge and sink)/dining area, a bedroom with sitting area and toilet with shower. The annexe has been separated from Westfield's rear garden for the most part by the installation of 1.8 metre (six foot) timber fencing. Access to the annexe is possible via the fence enclosed alley passing between Westfield and 1 Recreation Avenue (No 1).
4. The conditions in dispute concern the restriction of the annexe's occupation to the appellant's mother, Mrs Norah Jones, (condition 2) and the requirement to remove the fencing separating the annexe from Westfield when the annexe ceases to be occupied by Mrs Jones (condition 3). Condition 1 means that the permitted use commenced when the planning permission was granted on 25 July 2016.
5. The main issues are: whether condition 2 is reasonable and necessary in the interests of the living conditions of the occupiers of the neighbouring properties, with particular regard to noise and disturbance; and whether condition 3 is reasonable and necessary in the interests of the character and appearance of the area.

Reasons

Condition 2 – occupancy

6. The facilities within the annexe when taken with the fence that has been installed mean that the outbuilding is capable of being occupied independently of Westfield. In this regard there is some history of the annexe having been rented out to non-residents of Westfield.
7. The reason for the Council's imposition of condition 2 seeks to prevent the formation of an additional (independent) dwelling in the interests of safeguarding the 'amenity of neighbouring occupiers'. I have taken the reference to amenity to mean the safeguarding of the living conditions of the occupiers of the neighbouring properties, particularly terms of the comings and goings to the annexe.
8. Westfield is located in close proximity to the immediately neighbouring properties, No 1 and Taurus, and if the annexe was to be occupied independently of Westfield, then as a backland dwelling it is likely that this form of occupation would generate more comings and goings than would be the case for an annexe associated with Westfield's occupation. Any such increased intensity of activity, in such a tight knit environment, has the potential to cause unacceptable noise and disturbance for the occupiers of No 1 and Taurus. That concern appears to be borne out by the representations made to the Council prior to the application's determination. I therefore consider that the occupation of the annexe as an independent dwelling would unacceptably harm the living conditions for the occupiers of No 1 and Taurus.

9. The description of the permitted development, ie 'age dependent relative accommodation' is rather vague, with it having no particular meaning in land use planning terms. If condition 2 was to be removed in its totality then it is unclear precisely how the building could lawfully be occupied, given there would then only be reliance on the description of the development.
10. I therefore consider that the removal of condition 2 in its entirety could result in the annexe being occupied in a manner that would be harmful to the living conditions for the occupiers of No 1 and Taurus. I therefore conclude that precluding the annexe's occupation as accommodation that could be used independently of Westfield's occupation is both necessary and reasonable to ensure that the living conditions of the occupiers of the immediately neighbouring properties would be safeguarded.
11. In the event that it is found that an occupancy restriction is necessary the appellant has requested that condition 2's wording be varied to allow the annexe to be used by relatives other than Mrs Jones and/or by family friends. I consider that the annexe's use by relatives and/or friends of the occupiers of Westfield would not give rise to an intensity of use that would be harmful to the living conditions of the occupiers of No 1 or Taurus, because it is submitted that the annexe would be occupied by either the appellant's mother or used by other family members or friends, the latter being on a short term basis. I therefore find that it would be reasonable for the occupancy condition to be worded so as to enable the accommodation to be occupied by either unnamed relatives or friends of the occupiers of Westfield.
12. I am aware that concern has been raised about the operation of some security lighting in connection with the use of the outbuilding. I consider that such lighting would be more likely to be triggered by the intensity of the comings and goings associated with the occupation of an independent dwelling as compared with an annexe. I therefore consider that the frequency with which the security lighting would be triggered in association with the annexe's use by relatives or friends would not be harmful to the living conditions of the occupiers of the neighbouring properties.
13. For the reasons given above I conclude that condition 2 should be deleted and replaced by a condition that would allow the annexe to be occupied as ancillary accommodation to Westfield. The wording for the replacement condition is taken from Appendix A 'Suggested Models of Acceptable Conditions ...' to Circular 11/95: Use of conditions in planning permission¹. While some monitoring might be necessary I consider this condition would be enforceable by the Council and that it meets the tests for imposing conditions set out in paragraph 206 of the National Planning Policy Framework. The reason for imposing this condition would accord with Policy PMD1 of the Thurrock Core Strategy and Policies for Management of Development Focused Review: Consistency with the National Planning Policy Framework of 2015 (the CSPMDFR), which, amongst other things, seeks to safeguard the amenity (living conditions) of the occupiers of neighbouring properties.
14. As the replacement condition would not restrict the accommodation's occupation to a named person it would not be necessary for details of a reversion scheme to be submitted for the Council's approval upon the

¹ Although this Circular was largely cancelled by the Government in March 2012, following the publication of the National Planning Policy Framework, its Annex A has been retained

cessation of any particular occupier's use of the annexe. I have therefore not re-imposed this aspect of the originally imposed condition. As the outbuilding already exists there is no need for the condition to refer to the 'outbuilding hereby permitted' as that would be relevant to a building to be constructed.

Condition 3 - fencing

15. The fencing that has been installed is not visible from Recreation Avenue and its type and height are comparable with the fencing marking the boundaries with No 1 and Taurus and its appearance is typical of fencing found within rear gardens. Given the fencing's discrete location I consider that its presence is not causing harm to the character and appearance of the area. The fencing's siting and height relative to No 1 and Taurus also means that it is not prominent in the outlook from those neighbouring bungalows.
16. The effect of condition 2's replacement would be to allow the fencing's long term retention. However, as I have found that the fencing has an acceptable appearance there would be no long term harm to the area's character and appearance. The long term retention of the fencing would therefore not give rise to conflict with Policy PMD2² of the CSPMDFR because the development would be compatible with its surroundings. I therefore conclude that condition 3 is not necessary or reasonable in the interests of safeguarding 'visual amenity' in the area and that this condition should be deleted.

Other Matters

17. The appellant has referred to a proposal to extend and convert 20 Digby Road (No 20) into two flats, as a justification for the removal of conditions 2 and 3. While No 20 is a property that backs directly onto Westfield, the proposals for this neighbouring property are of an entirely different nature to the provision of an annexe and I therefore consider that the proposals for No 20 have no bearing on the appeal before me.
18. Westfield has three off-street parking spaces available to it and I consider that that level of parking provision is sufficient to serve the needs of Westfield and the annexe. However, the availability of this parking would not address the potential for noise and disturbance to be experienced by the occupiers of No 1 and Taurus and accordingly its availability does not justify the removal of condition 2.

Conclusions

19. For the reasons given above I conclude that the appeal should succeed in that condition 2 should be deleted and replaced, while condition 3 should be deleted.

Grahame Gould

INSPECTOR

² The CSPMDFR's version of Policy PMD2 having in January 2015 replaced the 2011 version of this policy referred to in the reason for condition 3's imposition