

Appeal Decision

Site visit made on 27 February 2017

by Clive Tokley MRTPI

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

Decision date: 20th March 2017

Appeal Ref: APP/D5120/D/16/3165964
40 Lessness Avenue, Bexleyheath, DA7 5SJ.

- 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 Mrs D Amarasinghe against the decision of the Council of the London Borough of Bexley.
 - The application Ref 16/01982/FUL dated 2 August 2016 was refused by notice dated 29 September 2016.
 - The development proposed is extension of existing ancillary living accommodation to accommodate an additional habitable room.
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Decision

1. The appeal is allowed and planning permission is granted for the extension of existing ancillary living accommodation to accommodate an additional habitable room at 40 Lessness Avenue, Bexleyheath, DA7 5SJ. The permission is in accordance with the terms of the application, Ref 16/01982/FUL dated 2 August 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DA/16PL01, DA/16PL02 and DA/16PL03.
 - 3) The extended outbuilding shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as No. 40 Lessness Avenue and shall not be occupied as a separate dwelling.

Preliminary matter

2. The appeal form indicates that the description of the proposal has not changed and I have therefore used the description of development as it appears on the application form.

Main Issues

3. The main issues are firstly whether the proposal would increase the likelihood of the building being used as a separate dwelling and secondly whether it would create a precedent for more separate dwellings in nearby plots.
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Reasons

4. No 40 together with No 38 forms a pair of semi-detached houses on the south side of Lessness Avenue. In common with the pairs of houses to the west Nos 40 and 38 have relatively long narrow gardens that back onto gardens of a similar length at the rear of bungalows in Abbott's Walk. The building the subject of the appeal is positioned at the end of the rear garden. The rear garden of No 40 can be accessed from an unmetalled service road that links Lessness Avenue and Powys Close. This provides pedestrian and vehicle access via a metal-gated entrance to an area of hard-standing close to the front of the appeal building.
5. In 2014 permission was granted for a detached building to provide ancillary accommodation. Whilst the envelope of the building has been substantially completed its kitchen and bathroom (as identified on the "existing" drawings) have not been fitted out and the exterior block walls remain un-rendered. It was my impression that the position of the building more closely resembles that shown on the "existing" drawing with the east flank wall being closer to the side boundary than indicated on the "proposed" drawing. This discrepancy has no material effect on the merits of the proposed extension.
6. The officer report indicates that the Council raises no objection to the design of the proposal and considers that the resultant extended building would not be disproportionate within the plot of No 40. The report also indicates that concern about the effect of the proposal on the living conditions of nearby residents is "unnecessary". I have no reason to disagree with the Council's conclusions on these matters and as regards the character and appearance of the area and the amenities of nearby residents I consider that the proposal would not conflict with the policies of the 2004 Unitary Development Plan referred to by the Council.
7. I have noted the Council's references to the *London Plan* space standards and I agree with its conclusion that the permitted building could accommodate up to two people living as a separate household. The additional room now proposed would create potential for a larger number of people to occupy the building but I have no reason to conclude that this in itself would increase the likelihood of the building being occupied independently of the house. Nor would it make it more difficult for the Council to detect or take action against any breach of planning control if it was to occur.
8. Taking account of the size of the dwelling I have no reason to conclude that the occupation of the extended building could not be ancillary to the house or that this proposal would inevitably result in the creation of a separate dwelling. I have therefore given no consideration to the issues that may arise from such a material change of use.
9. The grant of permission for the extension would therefore not create a precedent for the approval of separate dwellings in nearby gardens. The Council indicates concern that the proposal could result in a successor proposal to subdivide the plot into two with access to a new separate dwelling from the service road; however any such proposal would be considered on its own merits taking account of any issues that may arise from the creation of a separate dwelling.

Conditions

10. In granting permission for the original one-bedroom building the Council imposed a condition limiting the use of the building to purposes incidental to the host dwelling and was satisfied that this was sufficiently robust to prevent any harmful consequences. The use of the building as a separate dwelling would be a material change of use and therefore it may be argued that a condition preventing the independent use of the building is unnecessary. Further, the proposal is for operational development and therefore it would not negate the effect of the condition controlling the use of the original building. Nevertheless the model conditions in the extant Appendix A of Circular 11/95 (*Use of conditions in planning permission*) include a condition to prevent separate use and in the interests of consistency and clarity I have imposed a condition along the lines of that suggested by the appellant.
11. The Council indicates the need for a condition preventing the insertion of any windows in the east or south elevations of the proposal. The extension is attached to the (roughly) north-facing wall of the building and therefore has no south elevation. The east elevation faces the proposed decking and whilst no window is proposed in this elevation I can see no justification for a condition removing the right to construct one in the future.

Conclusion

12. Taking account of all matters I have concluded that the proposal would not increase the likelihood of the building being used as a separate dwelling and that it would not create a precedent for more separate dwellings in nearby gardens.
13. I therefore conclude that the appeal should succeed.

Clive Tokley

INSPECTOR