
Appeal Decision

Site visit made on 1 June 2017

by Simon N Hand MA

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

Decision date: 08 June 2017

Appeal Ref: APP/Y3940/C/16/3160210

The Annex at Lynford House, Odstock Road, Nunton, Salisbury, SP5 4HP

- 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 Dr James Baird against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice, referenced 15/00784/ENF, was issued on 6 September 2016.
 - The breach of planning control alleged in the notice is failure to comply with condition No 2 of a planning permission Ref S/1999/619 granted on 29 June 1999.
 - The development to which the permission relates is conversion of roof space above garage/store to provide living accommodation incorporating dormer and external staircase. The condition in question is No 2 which states that: The guest flat hereby permitted shall be used solely as ancillary accommodation to the existing dwelling (known as Lynford House), and shall not be occupied, sold, leased, rented or otherwise disposed of as a separate dwelling unit.
 - The requirements of the notice are: 5.1 Cease occupying the Annexe as a separate dwelling. 5.2 Ensure that the Annexe is occupied in accordance with the conditions referred to in paragraph 3 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the condition No 2 attached to the planning permission dated 29 June 1999, Reference S/1999/619, granted by the Council is discharged and the following new condition is substituted. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for conversion of roof space above garage/store to provide living accommodation incorporating dormer and external staircase without complying with the said condition but subject to the other conditions attached to that permission and to the following new condition.
 - 1) The Annex hereby permitted shall be occupied in the first instance solely by Nicola Haicalis. Once she ceases to occupy the Annex it shall not be occupied other than as ancillary accommodation to the existing dwelling (known as Lynford House), and shall not be occupied, sold, leased, rented or otherwise disposed of as a separate dwelling unit.

Background to the Appeal

2. Planning permission was granted for a guest flat in 1999, in the roof space above the garage at Lynford House. This is known as the Annex. A condition was attached stating "*The guest flat hereby permitted shall be used solely as ancillary accommodation to the existing dwelling (known as Lynford House), and shall not be occupied, sold, leased, rented or otherwise disposed of as a separate dwelling unit*". In 2008 this was temporarily relaxed by the addition of a new condition to allow a tenant to remain in the Annex for 1 year while they found suitable alternative accommodation.
3. An appeal was made against this condition requesting it be extended to 3 years and the appeal was dismissed on the grounds it was a typical annex that was functionally linked to the main dwelling and the accommodation ought to be occupied by persons who might be staff or elderly parents who would combine a need for close proximity with a degree of independence. There was a lack of privacy between the Annex and Lynford House with a shared curtilage, as well as all traffic having to pass in front of the neighbours at Hazelmead. These factors combined rendered the Annex unsuitable to be occupied as an independent dwelling.
4. Since then Lynford House has changed hands and the new owners have allowed Nicola Haicalis to live in the Annex, I shall discuss her arrangements below.

The Appeals on Ground (b) and (c)

5. In this case these grounds are essentially the same. If I were to find the occupation of the Annex by Ms Haicalis to fulfil the terms of the condition, then both (b) and (c) would be fulfilled. Whether she does so or not depends on the interpretation of the condition. The appellant argues it allows a guest flat, which is not defined in the condition, and so Ms Haicalis, who pays no rent and is a friend of the family is simply a long term guest.
6. In my view the condition is quite clear in that regardless of the description as a "guest flat" it must be used solely as ancillary accommodation to the existing dwelling. Ancillary accommodation is something that is not part and parcel of the main planning unit, but is ancillary to it. In this case the fully self-contained annex would have to be occupied by persons whose reason for being there were genuinely ancillary to the family in the main house. As the Inspector said, staff or elderly parents are two such examples. The question is therefore whether the nature of Ms Haicalis's occupation is ancillary to Lynford House.
7. The appellant explains that Ms Haicalis is a family friend who stays in the Annex without paying rent. The appellant and his wife are both doctors; the appellant is a consultant and his wife works part time. Ms Haicalis helps out with looking after the appellant's children. She has her own key to the house and free use of all the facilities. She cooks meals and babysits the children at least twice a week in the afternoon and evening, and several mornings she helps with breakfasts. She also babysits in the evenings on a regular basis and is available to act as cover if either parent is called out for a medical emergency. The neighbours at Hazelmead dispute the amount of time Ms Haicalis spends with the children, as they see her leaving the house in the morning and returning in the evening on a regular basis. However, unless one

were keeping a detailed log of all Ms Haicalis's movements both day and night, I doubt that one can be as certain of her whereabouts or activities as the neighbours' claim, and I have no reason to doubt the appellant's version of events.

8. However, Ms Haicalis is also employed, full time, by a plastic surgeon and she travels to work in her car most days. It seems quite clear that her use of the annex cannot be ancillary to the main dwelling. It seems she lives there for the most part entirely independently from Lynford House. The fact that she helps out with the children on a regular basis is not sufficient to make her occupation ancillary when she has her own separate employment and it seems her own separate life. It is not clear how many hours a week Ms Haicalis spends helping out at Lynford House, but it does not seem to be close to the hours spent at the full-time job. If anything her childminding role would seem to be incidental to her occupation of the Annex as separate dwelling, rather than the other way around. As the Council point out that she pays no rent is of little consequence and although she may have a close relationship with the appellant's family that does not impact on her use of the Annex. In my view Ms Haicalis's occupation of the Annex is in breach of the condition and the appeals on grounds (b) and (c) both fail.

The Appeal on Ground (a)

9. There is no dispute that the Annex is unsuitable to be used as an independent dwelling and the appellant has no intention of creating a separate planning unit. Nevertheless, the Annex is self-contained, and even has a small yard area at the foot of the entrance stairs that is walled off from the drive and could be said form a separate curtilage. The Council are thus quite correct to be concerned that a separate planning unit might be created by accident. The issue for this ground is whether the occupation of the Annex by Ms Haicalis is harmful and whether it would lead to the creation of a separate dwelling.
10. The owners and occupiers of Lynford house are clearly happy to accommodate Ms Haicalis, although it is they who would be most affected in terms of loss of privacy. The occupiers of Hazelmead are also affected and I was able to view the Annex from inside their house. The annex sits above the garage block at the head of the cul-de-sac that provides access to the houses and so is at right angles to Lynford House and Hazelmead. There are clear views across the front of Hazelmead from the small balcony at the top of the entrance stairs and from inside the Annex, particularly from the lounge/diner window.
11. These views are of the front of Hazelmead which is largely laid out for car parking. I was able to confirm it is impossible to see into Hazelmead itself from the Annex. Whoever occupies the Annex, and it could be occupied permanently in accordance with the condition, would have the same views. The previous Inspector did not consider that the privacy of the occupiers of Hazelmead was an issue and neither did the Council when they allowed the Annex, nor when they allowed it to be temporarily occupied by a tenant in 2008. I can see no reason to take an alternative view. The views from the Annex are distant and of an open and publicly visible part of Hazelmead. The impact on amenity of a loss of privacy of the open front parking area is minimal.
12. There is an increase in traffic movements across the front of Hazelmead, and this was one of the reasons the previous Inspector agreed the Annex was

unsuitable for separate residential use. However, the estimation of the occupiers of Hazelmead is that it is only 2 vehicle movements a day, linked to her job, and the occasional evening out. It is likely that ancillary occupation would lead to less traffic movements than if the Annex were a separate unit of accommodation, but not that there would be no traffic and the evidence suggests the current traffic movements are very low key. There is no suggestion any of the traffic movements are made at unsocial hours, and an extra 2 or even 4 movements a day would not be harmful.

13. In my view Ms Haicalis's occupation of the Annex does not cause any harm to the amenities of the neighbours at Hazelmead and so is not contrary to Core Policy 57 of the Wiltshire Core Strategy (2015) which seeks to protect the amenity of neighbours. There is also no suggestion her use of the Annex is likely to change in the future. If I were to allow the ground (a) appeal I would delete condition 2, but replace it with a similar worded one that also allowed the personal and temporary occupation by Ms Haicalis. This would ensure the Annex was retained as ancillary accommodation in the long term. This seems to be a reasonable compromise, because although Ms Haicalis occupation is in breach of the condition, it is not resulting in the problems the condition was designed to avoid.
14. I shall allow the appeal on ground (a) and the appeal on grounds (f) and (g) does not need to be considered.

Simon Hand

Inspector