
Appeal Decision

Site visit made on 12 June 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 23rd June 2017

Appeal Ref: APP/R5510/W/17/3169949

28 Keats Way, West Drayton UB7 9DS

- 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 Dr Luis Palacios against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 58018/APP/2016/1973, dated 22 April 2016, was approved on 30 November 2016 and planning permission was granted subject to conditions.
 - The development permitted is retention of existing outbuilding and use of this as office with shower and toilet facility ancillary to the existing HMO.
 - The condition in dispute is No 3 which states that: *Notwithstanding any details shown on the plans hereby approved, within 3 months of the date of this permission the shower, its enclosure and all related fixtures fittings shall be removed so that only a toilet and wash hand basin remain in the area marked as 'Shower Room' on drawing number 2016-028-A-3 Rev-1. Thereafter no new shower or bathing facilities shall be installed in the structure.*
 - The reason given for the condition is: *To remove facilities that would allow for the independent use of the structure to avoid any future fragmentation of the curtilage or the creation of a separate residential use, so as to protect the amenity of adjoining residential properties in accordance with Policies BE13, BE15 and BE19 of the Hillingdon Local Plan: Part Two - Saved UDP Policies (November 2012).*
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Decision

1. The appeal is allowed and the planning permission Ref 58018/APP/2016/1973 for the retention of existing outbuilding and use of this as office with shower and toilet facility ancillary to the existing HMO at 28 Keats Way, West Drayton UB7 9DS, granted on 30 November 2016 by the Council of the London Borough of Hillingdon, is varied by deleting condition 3.

Background and Main Issue

2. The existing outbuilding was subject to an enforcement notice requiring its removal following a breach of planning control. Planning permission was subsequently granted in November 2016 (Ref 58018/APP/2016/1973) to retain the outbuilding as an ancillary structure subject to three conditions.
 3. The appeal seeks to delete condition 3, which is intended to remove the shower, its enclosure and related fixtures and fittings. The Council consider the condition is necessary to prevent the independent use of the outbuilding to safeguard the living conditions of occupiers of adjoining properties. The appellant considers the condition is unnecessary and unreasonable and argues that the outbuilding cannot be used as an independent unit regardless of whether a shower exists.
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4. Therefore, the main issue is whether the dispute condition is necessary and reasonable in the interests of the living conditions of occupiers of adjoining properties.

Reasons

5. The existing outbuilding is located in the rear garden of 28 Keats Way adjoining the gardens of neighbouring properties. The main property is used as a house in multiple occupation (HMO). The outbuilding contains a main room that leads through to a smaller room currently fitted as a toilet and shower room. At my site visit, the main room had the appearance of an office and storage space. The appellant also refers to it being used as an occasional meeting space and provisional gym. There was no evidence of any sleeping or kitchen facilities, with the only sink being the hand basin in the shower room.
6. There have been concerns from the Council and neighbours about the separate occupation of the outbuilding previously. It is possible that the outbuilding could contain a bed for sleeping, while existing electricity points could provide the ability to heat the building and cook food. However, condition 2 of the extant planning permission requires the building to be used as an ancillary structure to the main property with no further sub-division. It prohibits the installation of kitchen facilities or the use of the building as sleeping accommodation. Any alleged breach of this condition can be investigated and action taken if necessary.
7. On its own, the presence of a shower does not make a difference in terms of whether the outbuilding can be used as an independent unit. It lacks the facilities to be independent and condition 2 prohibits changes that could result in a separate residential or business use. As an ancillary structure to the HMO used as an office, store and/or gym, there would only be occasional comings and goings of the HMO residents. This would have little effect on the living conditions of occupiers of adjoining properties in terms of matters such as noise and disturbance. Therefore, requiring the removal of the shower is neither necessary nor reasonable.
8. For these reasons, the deletion of condition 3 would have an acceptable effect on the living conditions of occupiers of adjoining properties. It would accord with Policies BE13, BE15 and BE19 of the Hillingdon Local Plan Part Two Saved UDP Policies 2012 which, amongst other things, seek development that complements the amenity and character of the area.

Conclusion

9. The disputed condition is neither necessary nor reasonable for the reasons given above. I conclude that the appeal shall succeed and I shall vary the planning permission by deleting the disputed condition.

Tom Gilbert-Wooldridge

INSPECTOR