
Appeal Decision

Site visit made on 12 December 2017

by Mrs J Wilson BA BTP MRTPI DMS

Inspector appointed by the Secretary of State

Decision date: 10th April 2018

Appeal Ref: APP/P5870/D/17/3179855

9 Hackbridge Road, Hackbridge, London SM6 7AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr Oscar Onyebuchi-iwudibia against the decision of the Council of the London Borough of Sutton.
 - The application Ref C2017/77071/HHA, dated 4 May 2017, was refused by notice dated 29 June 2017.
 - The application sought planning permission for the retention of use of existing outbuilding as a garden annexe without complying with a condition attached to planning permission Ref C2016/73935/HHA, dated 24 May 2016¹.
 - The condition in dispute is No 2 which states that: The extension hereby permitted shall be used only as accommodation ancillary to the use of the existing dwellinghouse, known as 9 Hackbridge Road, or for separate, non-self-contained occupation by elderly relatives of the occupants of that dwellinghouse.
 - The reason given for the conditions is: To protect the amenity of nearby and future occupiers.
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Decision

1. The appeal is allowed and planning permission is granted for the use of existing outbuilding as a garden annexe at 9 Hackbridge Road, Hackbridge, London SM6 7AY in accordance with the application Ref C2017/77071/HHA dated 4 May 2017, without compliance with condition number 2 previously imposed on planning permission Ref C2016/73935/HHA dated 24 May 2016 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan (Received 14th March 2016), Block Plan (Received 14th March 2016), Site Layout Plan (Received 14th March 2016), Elevations (Received 26th March 2016), Floor Plan and Roof Plan (Received 26th March 2016).
 - 2) The building hereby permitted shall be used only as accommodation ancillary to the use of the existing dwellinghouse, known as 9 Hackbridge Road.

¹ It is noted that there is an inaccuracy in the refusal notice for the variation of condition 2 in that the first schedule refers to C2017/73935/HAA whereas the correct reference number is C2016/73935/HAA

Application for costs

2. An application for costs was made by Dr Oscar Onyebuchi-iwudibia against the Council of the London Borough of Sutton. This application is the subject of a separate Decision.

Procedural matter

3. I have removed in the interests of precision the words "retention of" from the decision above. This is because S55 of the 1990 Act describes 'development' as 'the carrying out of building operations or the making of material changes of use' and not as their 'retention'.
4. During the life of the appeal the Sutton Local Plan was adopted (February 2018). References in the appeal to the 2012 Local Plan policies have been superseded and I give them no weight. Policies in the Sutton Local Plan 2018 now have the weight of fully adopted policies. The main parties have been afforded the opportunity to make representations on this change and I am satisfied that neither side has been prejudiced by this change in policy circumstances.

Background and Main Issues

5. The appellant suggests in the application form that the condition could be varied 'such that it can be used for holiday let for less than 90 days provided it is in accordance to the Deregulation Act 2015 while ensuring that it is not used as an independent residential unit with a different council tax account or postal address'. However, no specific wording for any replacement condition is provided, and the appellant also refers to removing the condition. Overall, while the appellants' intention to let the unit for short periods is clear, it is not evident to me, from all the information provided, that the appellant seeks any specific replacement condition and I have considered the appeal on that basis. The proposal before me relates to condition 2 only, and it is not open to me to alter the use for which permission was granted, which is as a garden annexe.
6. Therefore the main issues are whether the disputed condition is reasonable and necessary having regard to:
 - the accommodation provided by the appeal building and its suitability or otherwise for use as non-ancillary, self-contained living accommodation; and
 - the living conditions of the occupants of neighbouring properties with regard to noise and disturbance; and
 - the extent to which the condition restricts use of the building to elderly relatives.

Reasons

Accommodation

7. The building is compact comprising a single room with kitchen and sleeping space together with a separate w/c and shower room.

8. The gross internal floor area at around 17 sq metres (which is less than half the minimum standard for a separate unit as defined in the London Plan²), and would represent particularly cramped and inflexible living space if used independently. Consequently, despite the provision of cooking, washing and sleeping facilities, it is not suitable for occupation separately from the main dwelling. My view on this matter is reinforced by the limitations on the access to the building, which can only be reached through the main house or its garage. Moreover, there is no parking provision for the annex. In my judgement, and when measured against the standards of the London Plan, it would represent a poor standard of accommodation as an independent unit.
9. For the reasons set out above I conclude that the unit is not suitable for independent, self-contained occupation. Consequently, a condition making the purpose of the annex clear, as the disputed condition seeks to do, is reasonable and necessary. Its wholesale removal would conflict with Policies 9, 13, 29 and 37 of The London Borough of Sutton Local Plan 2016-2031 (2018) (Local Plan) and with Policies 3.5 and 4.5 of the London Plan and the London Housing Supplementary Planning Guidance. These policies and guidance together seek to ensure that development does not adversely affect the amenities of future occupiers, provides satisfactory access and parking provision and meets minimum standards for internal and external space.

Living conditions of nearby residents

10. The occupation of the unit as independent, self-contained accommodation would result in a greater level of general activity at the end of the garden than would be the case if used as ancillary accommodation with some facilities and activities shared with the main house. The site is surrounded by other private gardens and the more intensive level of activity associated with daily occupation of the annex by persons unconnected with the main house would likely give rise to an effect on the occupants of the existing dwelling and neighbouring properties by reason of noise, general activity and disturbance. In my judgement these would be significantly greater levels than would be expected of an ancillary use connected with the main house.
11. The proposal would therefore conflict with Policies 13 and 29 of the Local Plan and the Design of Residential Extensions SPD. These policies seek to ensure that development maintains and enhances the local character and appearance and protects the amenity of occupiers from activity which would adversely affect their living conditions including from noise and disturbance. For these reasons the condition is necessary in order to protect the living conditions of the occupants of neighbouring properties.

Wording and reasonableness

12. There is no evidence from the Council that there is any justification for a restriction to elderly relatives. Indeed, they accept that the use of the annexe by any relatives of occupants of the main household would be acceptable. However, this reference only appears in the second part of the condition. The first part, which permits use as 'accommodation ancillary to the use of the existing dwellinghouse' has no such restriction. I cannot see that the second part of the condition adds to that, since it makes clear that occupation is only on a 'non-self-contained' basis, which appears to me to mean that such

² Table 3.3 Minimum space standards for new dwellings – The London Plan March 2016

occupation should be ancillary. Since the first part of the condition allows use on an ancillary basis, this second part of the condition is unnecessary and has the potential to cause confusion. I will therefore remove it. The effect of this is to simplify and clarify the condition rather making it more or less onerous.

13. The Council also argue that the condition could be amended to ensure that the house and annexe are used wholly together and the annexe is not sold or let separately from the main dwelling. For the reasons I have already identified it is necessary for the use of the building to be associated with the main dwelling and the function of the condition serves this purpose, whereas on the evidence provided there is insufficient reason for the wording of the condition to be made more onerous by adding to it as the Council suggests.

Other matters

14. The appellant points to the Deregulation Act of 2015, which provides, in this location, for properties to be let on a short term basis for less than 90 days. However, any such provision is a separate matter, and I have considered the proposal before me on its planning merits. Whether the permitted use of the appeal building allows it to be let out under the provisions of the Act is not a matter for me to determine.
15. The appellant states that the building has always had facilities within it and was upgraded and refurbished in 2015, indeed argues that it has been used for such a long period of time that the Council ought to have issued a lawful development certificate. There is little substantive evidence to support this assertion and it carries little weight in my deliberations on the appeal to change the condition. In any event, if evidence exists it would be open to the appellant to make a Lawful development application direct to the Council.
16. The appellant is dissatisfied at the Council's handling of the matter, both before and after the planning application was made. However, that is disputed by the Council and, in any event, has little bearing on my assessment of the planning merits of the proposal before me. Although the appellant claims that planning permission already existed for the building prior to the recent permission, the document supplied relates to a garden shed and, in any event, is not a planning permission.

Conditions

17. It is unclear whether the plans submitted with this application are the same as those granted under the original permission Ref C2016/73935/HHA dated 24 May 2016. I have therefore used the same plan details as those in the original permission for the avoidance of doubt. Condition 2 is the only other condition on the original consent which I have reworded for the reasons already set out.

Conclusion

18. For the reasons given above I conclude that the appeal should partly succeed. I will grant a new planning permission without the disputed condition but substituting a new condition in its place.

Janet Wilson

INSPECTOR