
Appeal Decisions

Site visit made on 25 April 2018

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2018

Appeal A Ref: APP/Q5300/X/17/3181362

Land and building at 2 Meadow Close, Enfield EN3 5PE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Samantha Walsh against the decision of the Council of the London Borough of Enfield.
 - The application Ref 17/01999/CEA, dated 4 May 2017, was refused by notice dated 29 June 2017.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is the use of the outbuilding at the rear as a granny annexe.
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Appeal B Ref: APP/Q5300/W/17/3187195

1 and 2 Meadow Close, Enfield EN3 5PE

- 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 Ms Samantha Walsh against the decision of the Council of the London Borough of Enfield.
 - The application Ref 17/03246/FUL, dated 19 July 2017, was refused by notice dated 14 September 2017.
 - The development proposed is described as a "first floor rear extension to Nos 1 and 2 Meadow Close and change of use of No 2 Meadow Close from Class C3 (dwellinghouse) to Class C4 (HMO)".
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Decision – Appeal A

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is considered to be lawful.

Decision– Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. Appeal A concerns an existing detached building within the curtilage of 2 Meadow Close. The Council has referred to an investigation relating to the use of the property as a HMO. The application forms describe it as a dwelling and I have no evidence to indicate otherwise.
4. I have taken the description of the development from the Council's decision which the appellant has repeated on the appeal form. In section 7 of the

application form for the LDC it is clarified that the proposal is for the use of the outbuilding as a 'granny annexe' by a family member in association with the occupation of the main house.

5. As noted above, Appeal B concerns a planning application to change the use of the dwellinghouse itself at No 2. The merits of this proposal are not relevant to the matters of lawfulness to be determined under Appeal A – but I shall take account of the effect of the LDC so granted in my deliberations on Appeal B.
6. The proposed use of No 2, to be considered in Appeal B, would fall under schedule 1, Class C4 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO): use of a dwellinghouse by not more than 6 residents as a "house in multiple occupation (HMO)".
7. The extension subject to Appeal B would not only enlarge the first floors of Nos 1 and 2 but would also be a part single and part 2 storey structure. The Council does not object to this element of the proposed development.

Appeal A - Main Issue

8. The main issue is whether the use of building as a residential annexe to the dwellinghouse at 2 Meadow Close would be lawful. The onus is on the appellant to make her case on the balance of probabilities.
9. In this appeal, the question is whether the use would have been lawful if instituted or begun on the date of the LDC application, 4 May 2017.

Reasons

10. The submitted plans show that the proposed annexe would include a bedroom, living room with cooking facilities as well as a WC and shower room. The building would thus contain all of the facilities required for day-to-day private living, so that it could potentially be used and occupied as a separate dwelling.
11. As the Council notes, permission is granted under Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) for the provision of buildings within the curtilage of a dwellinghouse where required for purposes incidental to the enjoyment of the dwellinghouse. The term 'incidental' describes uses which are not integral to, but have a functional relationship to the primary use of the planning unit. Examples of uses incidental to the enjoyment of a dwellinghouse might include car parking or a home gym. The Government's Technical Guidance: Permitted Development Rights for Householders, clarifies that when utilising Class E rights, a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation or use of an outbuilding for primary living accommodation.
12. The appeal building would be used for living and sleeping purposes. Since those activities are part and parcel of, or integral to a dwellinghouse use, it is clear that the building would not be used for incidental purposes. However, it does not follow that there would be a material change of use of the building without the requisite planning permission, because the land already has a lawful residential use. The decisive factor is not whether the building would be used for purposes incidental to the main dwelling. Rather, it is necessary to assess whether the appeal building would be used as a physically and/or

functionally separate dwelling, or would provide living accommodation that is integral to the use of the existing dwelling at No 2.

13. This approach is consistent with the judgment in *Uttlesford DC v SSE & White* [1992] JPL 171, where enforcement action had been taken against the residential use of a building permitted for incidental use (as a garage). It was held by the court that, although the garage now had the facilities of a self-contained unit, it nonetheless remained part of the same planning unit as the original dwellinghouse and the planning unit remained in single family occupation. In that situation, a material change of use had not occurred. The Council has not reproduced the specific case law references or citations from the journals mentioned within its statement that lead me to consider that the assessment in *Uttlesford* was wrong.
14. Little detail has been provided about the intended functioning of the building other than the appellant confirming that it is proposed for the occupation by an elderly family member of a prospective tenant of No 2. The submitted plan shows the building within the garden of No 2 without any subdivision through additional enclosures. There are no proposals to change access arrangements and there would appear from my site visit to be very limited opportunity to do so given that No 2 is in the middle of a terrace.
15. Thus, the use of the building as described by the appellant and shown on the submitted plans would not create a new planning unit because the annexe would not be physically separate or distinct from, or occupied for different or unrelated purposes to the use of the existing dwellinghouse within the same planning unit. If these circumstances were different from the details provided with the application in the future and a material change of use of the building did occur, that would be a matter for the Council to consider at that time.

Conclusion – Appeal A

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of an outbuilding at rear as a granny annexe was not well-founded and that Appeal A should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B - Main Issues

17. The main issue is whether the proposed residential use is appropriate within the area surrounding the appeal site.

Reasons

Policy context

18. The change of use of a building from a Class C3 dwellinghouse to a HMO is permitted by Article 3, Schedule 2, Part 3, Class C4 of the GPDO. However the appeal site is within an area subject to an "Article 4 direction" where that permitted development right is withdrawn. That is why express planning permission is required for the proposal in Appeal B.
19. Policy DMD5 of the Enfield Development Management Document¹ (DMD) sets out provisions to ensure that the conversion of existing units into self-

¹ Enfield's Development Management Document, adopted November 2014

contained flats and HMOs do not harm the residential character of the area or result in an excessive number or clustering of conversions. DMD paragraphs 4.3.6 to 4.3.12 explain the background to the Council's concerns regarding the conversion of residential properties. Although acknowledging that conversions can play an important role in increasing housing supply, uncontrolled intensification can lead to unacceptable change in the character of established residential areas and impact on residential amenity.

20. Core Strategy² (CS) Policy 5 relating to housing types, amongst other things, requires residential proposals to balance the need to ensure the most efficient use of land whilst respecting the quality and character of existing neighbourhoods. CS Policy 30 relates to the maintenance and improvement of the quality of the built and open environment. This includes all developments being of high quality, having special regard to their context and reinforcing local distinctiveness.

Assessment of impacts

21. The appeal site is at the entrance to Meadow Close, within a short terrace of properties that face outwards on the corner of the road angled towards the open space of Albany Park on the opposite side of Bell Lane. The dwellings are set back behind a hard-surfaced area which includes demarcated parking spaces as well as the pedestrian footway. To the rear, the gardens of the dwellings adjoin other gardens including those within Redlands Road. The plots of these and the other properties at the corner of Meadow Close are splayed out, being wider at the rear, giving them a more spacious layout than some of the tighter grain developments nearby. Meadow Close as well as the neighbouring streets such as Redlands Road and also the dwellings that face towards Bell Lane are set out in a typically suburban manner which is a strong characteristic of the area.
22. Other than No 1 Meadow Close, no other nearby dwellings have been converted to flats or into HMOs. The proposal would not lead to a breach of the 20% limit set out in DMD Policy DMD5 at sub-paragraph (b). However, because No 1 and No 2 are directly next to each other, it would breach the second bullet point of sub-paragraph (b) which only allows for 1 out of a consecutive row of 5 units to be converted. The proposal does not therefore comply with Policy DMD5.
23. The main obvious indication that No 1 is not a single family dwelling at the moment is the inclusion of 2 front doors which face toward the junction, behind the off-street parking areas. The increase in the numbers of residents since that building has been converted would logically lead to an increase in activity to and from the property. That activity was not apparent to me but my site visit was only a snap-shot in time. The proposed change of use and extension of No 2 would enable occupation of 3 ensuite rooms as a HMO rather than the very modest 2 bedroom family accommodation currently provided.
24. The occupants of the proposal HMO may be more transitory than a single small family household living in the accommodation on a short term basis. Furthermore, the reduced inter-relationships between the occupants could manifest in an increase in vehicles and other movements in and out of the property whereas within a family unit, one would expect some sharing and co-ordination of trips, some of those within vehicles. Furthermore, each occupant

² Enfield Council Core Strategy, adopted November 2010

may have their own set of friends and acquaintances rather than the connected visitors which would again contribute to an increase in activity to and from the site.

25. As well as activity to and from the property being increased, there would be more activity within the garden area which would be noticeable for adjoining residents. There may also be further need for garden structures as well as non-permanent paraphernalia including bins, cycle stores and sheds. At the moment, the large garden used by a small single household will help to act as a buffer to the noise of activity in nearby roads for the occupants of this and neighbouring dwellings. The proposal on the other hand could lead to greater visual and audible impacts for adjoining residents. Although the increased impacts would not unacceptably harm living conditions of those adjoining occupants, it would result in a noticeable change in character of the area.
26. In addition to the accommodation expressly proposed within Appeal B, the outbuilding as considered in Appeal A could also potentially become further accommodation that could lawfully be used as a part of the HMO if approved because there would be less than 6 bedrooms within the property as a whole. Use of the outbuilding would not be lawful if it was a separate flat but if used as part of a dwellinghouse by not more than 6 residents, it would add to the noticeable impacts of the proposal.
27. The clustering of higher density accommodation in an area of otherwise suburban family dwellings such as in this case can lead to small but noticeable impacts due to the increase in the level of activity. Cumulatively this can change the feel of an area over time. A characterisation study in 2011 is referred to in the DMD which highlights the negative impacts caused by flatted developments in parts of the borough. The Council has an adopted strategy through the development plan process for dealing with changes of use of this kind across its area.
28. In relation to the main issue, the proposal would have a small but harmful effect on the residential character of the surrounding area and the proposed residential use is therefore inappropriate within the area surrounding the appeal site. This would not comply with DMD Policy DMD5. With respect to paragraph 4.3.10 of the DMD, this would exacerbate rather than be mitigate the impacts of existing noise and activity in the area. The quality and character of the neighbourhood would not be respected and the proposed use would not reinforce the local distinctiveness of the area. In these respects the proposal would not comply with CS Policies 5 and 30.

Other Matters

29. The proposal would increase the choice of housing in this area but I have little evidence about the overall effect of the additional accommodation on housing requirements within the wider area. The increase in activity would not impact substantially upon the living conditions of the nearby properties even though those adjoining residents would notice the change of use. The potential increase in vehicle use would not be harmful to highway safety.
30. The appellant has referred to an allowed appeal relating to a similar proposal at 62 Cedar Avenue (APP/Q5300/W/16/3144523). However, I note that in that case the Council withdrew their objections to the proposal on the basis that an enforcement investigation indicated that a nearby dwelling had unlawfully been

converted into flats. When the breach was rectified it made a material difference to their case. There was no conflict with DMD Policy DMD5 unlike in this appeal. Reference is also made by the appellant to another appeal at a property at 90 Albany Park Avenue (APP/Q5300/A/14/2220132). In that case, the Council had accepted that there was not a cluster of conversions unlike in this case. There are material differences in the circumstances of the case before me.

31. These other matters do not outweigh the harm that I have identified in relation to the main issue including the non-compliance with development plan policies.

Conclusion - Appeal B

32. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 4 May 2017 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposal as applied for would not result in a material change in use of the existing property.

Signed

A Harwood

Inspector

Date: 09 July 2018

Reference: **APP/Q5300/X/17/3181362**

First Schedule

The use of an outbuilding at rear as a granny annexe.

Second Schedule

Land and building at 2 Meadow Close, Enfield EN3 5PE.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 09 July 2018

by Andy Harwood CMS MSc MRTPI

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