The Planning Inspectorate

Appeal Decision

Site visit made on 16 July 2019

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2019

Appeal Ref: APP/G5180/W/18/3217595
138 Birkbeck Road, Beckenham BR3 4SS

- 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 Mr Ian Cummins against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/18/04175/RECON, dated 29 August 2018, was refused by notice dated 29 October 2018.
- The application sought planning permission for the demolition existing double garage and erection of purpose built two storey side extension without complying with a condition attached to planning permission Ref DC/17/03779/FULL6, dated 26 February 2018.
- The condition in dispute is No 5 which states that: *'The extension hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 138 Birkbeck Road.'*
- The reason given for the condition is: *'To safeguard the living conditions of future and neighbouring occupiers and ensue highway safety.'*

Decision

1. The appeal is dismissed.

Background and Main Issue

2. I have had regard to the extensive planning history relating to the appeal property. Of particular relevance to this appeal, planning permission was refused under application ref: DC/17/03779/FULL6 as, in the Council's view, the proposal would be a cramped form of development, out of keeping with the form and character of the surrounding area. Furthermore, it was considered that due to its design and internal layout it would not constitute an ancillary form of development to the main dwelling at 138 Birkbeck Road (No.138) and would be capable of being severed from No.138 and used as a separate dwelling. The Council's decision was appealed and the proposal was allowed.

3. Following that appeal, a further application ref: DC/18/04175/RECON was made which is the subject of this appeal. This sought to remove Condition No.5, as set out at the top of this Decision, attached to that appeal approval to enable the approved development to be a separate dwelling without being ancillary to the property at No.138. The Council refused that application stating that its design, internal layout and severance from the main dwelling would result in a cramped and over-intensive form of development that would fail to meet the minimum space standards for residential accommodation. Therefore, it would be detrimental

to the living conditions and amenity of future occupiers. Subsequently, the then appellant exercised their right to appeal that decision.

4. In light of the above, and based on the evidence before me, I consider the main issue to be the effect that removing the disputed condition would have on the living conditions of future occupiers with regard to internal living space.

Reasons

5. The appellant has stated that it is the intention of the proposed scheme to provide purpose-built, independent accommodation for a disabled elderly relative of the appellant. Moreover, it is argued that the disputed condition should be removed as it does not meet four of the six tests of conditions set out in Paragraph 206 of the Planning Practice Guidance (PPG). The tests identified are that it is not necessary, not relevant to the development to be permitted, not enforceable and not reasonable in all other respects. Accordingly, I have had due regard to these matters in assessing and determining this appeal.

6. I note from the submitted amended drawings that there is potential for the revised scheme to result in the severance and independence of the proposed development from the host dwelling at No.138. The disputed condition currently prevents this from occurring. As such, in order to retain the approved development as ancillary to the host dwelling, I consider the disputed condition to be necessary, reasonable and appropriate to ensure that such severance does not occur. Whilst I note that the front and rear gardens of the property are not being subdivided, I find that this in and of itself does not confirm that the proposed development would remain in an ancillary use to No.138.

7. Notwithstanding the approved development being described as ancillary to No.138, I find that the removal of the internal door link would result in the severance of the host property and the approved development. Moreover, it is noted that both the existing and approved elements of the development at the site would have separate external door access. As such, I consider that the standard of accommodation proposed, in terms of internal living space, must be assessed in terms of the approved development being a potential separate dwelling.

8. Policy 3.5 of the London Plan (LP) and the Mayor of London's Housing Supplementary Planning Guidance (SPG) say the minimum internal floorspace required for residential dwellings, on the level of occupancy, that could reasonably be expected within each unit should comply with the Nationally Described Space Standards 2015 for housing (NDSS). The proposed scheme would comprise a two-bedroom, two-storey property which would reasonably accommodate three people. I note that the appellant indicates that the appeal development would only accommodate an elderly family member and their carer. However, the proposed floorspace would be around 67sqm. The NDSS requires 70sqm for such a dwelling across two floors. On that basis, the proposal, with the potential to accommodate three people, would not comply with the relevant minimum space standards.

9. Moreover, as an independent dwelling, I find that the overall shortfall in floorspace within the proposed development would be detrimental to the living conditions of future occupiers. These matters were not before the Inspector of the previous appeal[1] who allowed the original development which was determined in the context of its appearance and purpose clearly as an annexe or ancillary addition to No.138.

10. The appellant argues that as the previously approved development was acceptable, the imposition of Condition 5 is unreasonable. However, based on what I have

[1] Appeal Ref: APP/G5180/D/17/3191129

seen and read, I find that the approved development was deemed acceptable, in part, on the basis that Condition 5 was imposed. Therefore, in that context, I do not consider the imposition of the condition to be unnecessary, unreasonable or unenforceable.

11. Having had regard to the above, I find that the removal of the disputed condition would result in an unsatisfactory form of development which it has been previously sought to avoid. Furthermore, there is nothing to indicate that circumstances around this matter have changed. From the appellant's submissions, whilst the presence of a carer is noted, it remains unclear to me as to whether the proposed scheme is for a dependent or independent elderly occupier. Nevertheless, it is evident that the scheme would have no internal link to No.138. As such, I find its genuine use as an annexe or ancillary to No.138 for the purposes identified to be impractical and questionable.

12. Therefore, I consider that the proposed development would not be acceptable or appropriate. It would have severance from the host dwelling and would provide a standard of accommodation which, when reasonably considered as a separate planning unit, would be unacceptable with insufficient internal living space for an independent dwelling. Accordingly, I consider the disputed condition, Condition 5, to be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects.

13. Consequently, I conclude that the removal of the disputed condition would have a significant adverse effect on the living conditions of future occupiers in terms of the provision of internal living space. As such, it would be contrary to Policy BE1 of the Bromley Unitary Development Plan, Policy 3.5 of the LP and the Mayor of London's Housing SPG and the NDSS 2015 for housing.

Other considerations

14. I have had regard to the Public Sector Equality Duty (PSED), set out in Section 149 of the Equality Act 2010, which relates to the need to eliminate unlawful discrimination, harassment and victimization and to advance equality of opportunity and foster good reactions between people who share a protected characteristic and people who do not share it. I note that age is a relevant protective characteristic which the PSED applies. The proposal would provide accommodation for an elderly family member who requires ground floor living and their carer. Whilst I appreciate the circumstances outlined by the appellant in this case, I am satisfied that the effect of dismissing this appeal against Condition 5 on the individual with a protective characteristic does not outweigh the harm to the living conditions of future occupiers and the conflict with the development plan.

15. I have also given due consideration to the other appeal decisions and schemes referred to in this case and assessed them accordingly as material considerations. Notwithstanding this, as I do not have full details of these before me, I have given limited weight to them in my determination of this appeal and, in any event, I must determine the appeal proposal before me on its own merits.

Conclusion

16. Therefore, for the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A McCormack

INSPECTOR