



Appeal Decision

Site visit made on 7 July 2020 by Ifeanyi Chukwujekwu BSc MSc MIEMA CEnv AssocRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/H0724/D/20/3247360

56 Station Lane, Hartlepool TS25 1BG

- 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 and Mrs Clayton against the decision of Hartlepool Borough Council.
 - The application Ref H/2019/0398, dated 3 September 2019, was refused by notice dated 28 October 2019.
 - The application sought planning permission for demolition of outbuilding and erection of a single storey timber granny annexe for ancillary use to the main dwelling without complying with conditions attached to planning permission Ref H/2019/0233, dated 23 July 2019.
 - The conditions in dispute are Nos 2 and 3 which state that: *The development hereby approved shall be carried out in accordance with the following approved plan(s) and details; Location Plan, Ref. 1788.3, Ver. 1, Rev. 0 (1:1250); Proposed Block Plan, Ref. 1788.5, Ver. 1, Rev. 0 (1:500); Elevations (Proposed), Ref. 1788.2, Ver. 1, Rev. 0 (1:100), all received 17th May 2019 by the Local Planning Authority; and Footprint (Proposed Floor Plan), Ref. 1788.1, Ver. 1, Rev. 1 (1:50), received 19th July 2019 by the Local Planning Authority; and The ancillary living accommodation (annexe) hereby approved shall be laid out strictly in accordance with the Footprint (Proposed Floor Plan) received by the Local Planning Authority on 19th July 2019 (Ref. 1788.1, Ver. 1, Rev. 1) and shall not include a kitchen.*
 - The reasons given for these conditions are: *For the avoidance of doubt and in the interests of a satisfactory form of development, to comply with Policy HSG12 of the Hartlepool Local Plan.*
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Decision

1. The appeal is allowed and planning permission is granted for demolition of outbuilding and erection of a single storey timber granny annexe for ancillary use to the main dwelling at 56 Station Lane, Hartlepool TS25 1BG in accordance with the application Ref H/2019/0398, dated 3 September 2019, without compliance with condition numbers 2 and 3 previously imposed on planning permission Ref H/2019/0233, dated 23 July 2019 and subject to the conditions stated in the attached schedule.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Background and Main Issues

3. An application for the demolition of an outbuilding and erection of a single storey timber granny annexe for ancillary use to the main dwelling ¹ was approved and granted permission on 23 July 2019. Condition No 2 of this permission required that the development granted approval should only be carried out in accordance with the approved plans which were considered in determining the application and condition no 3 required that the approved development shall not include a kitchen.
4. The appellant is seeking to vary this condition regarding revised design plans to include a kitchen, however the outline footprint has not changed. The appellant maintains that the changes would provide ancillary accommodation for the appellant's family and would not be used as a separate dwelling. The Council considers that the inclusion of the kitchen would effectively mean that the proposal would not serve as an ancillary unit of accommodation and that it would be of a form that would encourage occupation as a separate dwelling in future. If that did occur, the Council contends that the proposal would reduce private amenity space within the curtilage to the detriment of living conditions of future occupiers.
5. It is important to understand the nature of the proposal and the remit of the appeal. The original application was submitted as a householder proposal for an outbuilding that was ancillary to the use of the existing dwelling. It was approved on that basis. The appeal proposal sought to vary conditions 2 and 3 to facilitate the inclusion of a kitchen. If the proposal, including the kitchen, is not capable of being used in an ancillary manner planning permission it would fall outside the scope of the original permission. A separate planning permission would be required for the erection of a new dwellinghouse and that is not something that can be considered within the scope of this appeal.
6. Therefore, the key question for the appeal is whether the inclusion of a kitchen would fall within the scope of the original permission such that it would still be ancillary to the original property or whether it is of a form that would inevitably lead to the creation of an independent dwellinghouse. The Council's concerns relating to future living conditions would only potentially arise if the property was used as a separate dwellinghouse. In other words, if the development is used in a manner that is ancillary to the existing dwelling, the Council's concerns would not materialise because the garden would be used by members of the same household.
7. If it were used as a separate dwellinghouse, unconnected to the main property, a separate planning permission would be required, and the Council could consider the merits at that stage. That is not a scenario that I need to consider here because, if I was to find that the proposal would not be ancillary the appeal would fail because the proposal would not fall within the scope of the original permission.
8. As such, the main issue in this appeal is whether the proposed development would serve an ancillary function to the existing dwelling or whether the design and function of the property would encourage its occupation as a separate dwelling when no longer required.

¹ H/2019/0233

Reasons for the Recommendation

Principle of development – use and occupation

9. The outbuilding to be demolished is located within the curtilage of no.56 Station Lane. The amended proposal would include as previously approved a living area, shower room, a bedroom and would now include a kitchen within the previously approved living area.
10. The Council's concern that the proposal would give the occupant the facilities of a self-contained unit and could be used as a separate dwelling is acknowledged, however the appellant has stated that the proposal is only intended to function as an annex and would be occupied by family relatives sharing living activity in company with the family in the main dwelling. I can only base my decision based on evidence before me and given that the appellant has not applied for a separate planning unit with its own access and parking, I find no reason to suggest that the proposal would be used contrary to what has been applied for.
11. The appellant has also made reference to the case of *Uttlesford DC v SSE & White [1992]* in which the judge considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annex with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. I find no reason to dispute this judgement and apply same reasoning in consideration of this appeal.
12. In other words, each case must be considered on its individual merits. In this case, the annex would be used by a member of the family of the main house, there would be no separate access or postal address and all services would be connected and metered to the main house. The garden would not be segregated and the appellant states that the occupants would spend time eating and socialising in the main house. On the information provided I am satisfied that the building would be used in an ancillary manner. Whilst a kitchen may be included to enable the occupant to prepare meals it does not follow that they would lead a life independent of the other residents of the household. Rather, the information presented suggests that they would form part of the household in the sense of being a relative but also in a functional sense. They would no doubt prepare some meals in the annex but would also share accommodation at other times with members of the family. Consequently, I am satisfied that the building, including a kitchen, would be used in an ancillary manner.
13. Furthermore, occupation as a separate dwelling would be prevented by condition 4 of the existing approval, which is to be retained, which requires that occupation is solely for purposes ancillary to the residential use of the main dwelling and thus cannot be used for any other purpose. There is nothing to suggest that the appellant has any intention of using the building other than in the manner specified in the appeal statement. If such circumstances did arise, and the property was used as a separate dwellinghouse occupied independently of the main house, that would amount to a breach of condition 4

and it would be open to the Council to consider taking enforcement action at that stage.

14. In addition, it does not follow that the inclusion of a kitchen would encourage use as a separate dwellinghouse in future. The annex would be situated in close proximity to the main house and the garden area would be shared. That is an arrangement that may well be acceptable where occupants are from the same family, but residents of the main house are less likely to find that proximity acceptable if there was no connection between them and the occupants of the annex. Thus, the position in the plot is likely to discourage separate occupation. If occupation by the currently intended relative should cease, other family members could make use of the building or it could be repurposed for other ancillary activities. Therefore, I am not satisfied that the design or location would necessarily encourage use as a separate dwellinghouse, notwithstanding the inclusion of a kitchen.
15. I find that the addition of a kitchen to the proposal would not change the intended use as applied for, and that the proposed development would serve an ancillary function to the existing dwelling and is not of a form that would encourage its occupation as a separate dwelling. Accordingly, I find no conflict with the National Planning Policy Framework (NPPF) and policy HSG12 (criteria 2) of the Hartlepool Local Plan (2018) (the 'LP') which seeks to ensure that residential annexes are designed so that it will serve an ancillary function to the existing dwelling and are not of a form that would encourage occupation as a separate dwelling when no longer required.

Conditions

16. In addition to the standard time limit condition a condition is necessary to ensure that the proposed development is carried out in accordance with approved plans, in the interests of clarity. It is also necessary to impose a condition which limits the occupation of the annex to ensure the accommodation remains ancillary to the main dwelling in line with the development for which permission was sought. It is also necessary to attach a condition to ensure that the materials used are in accordance with the details within the Planning, Design and Access Statement submitted in support of the application, in order to ensure a satisfactory appearance.
17. Additionally, in order to enable the Local Planning Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property, a condition is necessary to remove permitted development rights to prevent the extension or alteration of the approved ancillary living accommodation without prior approval of the Local Planning Authority.
18. In the interests of the amenities of the occupants of neighbouring properties with regards to noise and disturbance, a condition is necessary in order to control the timing of construction and other associated activity related to developing the proposal.
19. Given that condition 2 would now include the revised footprint, condition 3 of the previous approval (H/2019/0233) which excludes the addition of a kitchen is no longer required.

Conclusion and Recommendation

20. For the reasons given above and having had regard to evidence before me, I recommend that the appeal should be allowed.

Ifeanyi Chukwujekwu

APPEALS PLANNING OFFICER

Inspector's Decision

21. I have considered all the submitted evidence and the Appeal Planning Officer's report, and on that basis, I agree that the appeal should be allowed.

Chris Preston

INSPECTOR

Schedule 1 – Conditions

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.
2. The development hereby approved shall be carried out in accordance with the following approved plan(s) and details: Location Plan, Ref. 1788.3, Ver. 1, Rev. 0 (1:1250); Proposed Block Plan, Ref. 1788.5, Ver. 1, Rev. 0 (1:500); Elevations (Proposed), Ref. 1788.2, Ver. 1, Rev. 0 (1:100),; and Footprint (Proposed Floor Plan) 1788.1 Version 1 Revision 2.
3. The ancillary living accommodation (annexe) hereby approved shall be occupied in conjunction with the use of the existing property (56 Station Lane, Seaton Carew) as a single dwellinghouse (C3 Use Class) only and shall not be used as a separate dwellinghouse (C3 Use Class), holiday accommodation (C1 Use Class) or for any other use class.
4. The external materials used for the development hereby approved shall be carried out in accordance with those stipulated within the Planning, Design and Access Statement (Ref. 336/OWIHUS), received on 18 June 2019 by the Local Planning Authority unless otherwise agreed in writing with the Local Planning Authority.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), the ancillary living accommodation hereby approved shall not be extended or altered in any way without the prior written consent of the Local Planning Authority.
6. No construction/building works or deliveries shall be carried out except between the hours of 08.00 am and 6.00 pm on Mondays to Fridays and between 9.00 am and 1.00 pm on Saturdays. There shall be no construction activity including demolition on Sundays or on Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority.