
Appeal Decision

Site visit made on 1 September 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

Appeal Ref: APP/G3110/W/20/3254040
320 Banbury Road, Oxford OX2 7ED

- 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 Robin Swailes Design and Development against the decision of Oxford City Council.
 - The application Ref 20/00967/FUL, dated 17 April 2020, was refused by notice dated 8 June 2020.
 - The development proposed is the amalgamation of 2 no. flats to create 1 x 1 bed dwelling (Use Class C3), the extension and alteration of windows and doors to garden annexe to create 1 x 1 bed dwelling (Use Class C3) and provision of bin and bicycle storage and communal amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have used the description of development given on the appeal form and decision notice in my heading above as it is more specific than that given on the planning application form.
3. Since the Council made its decision the Oxford Local Plan 2036, June 2020 (LP) has been adopted. Accordingly, policies CP1, CP8 and CP10 of the Oxford Local Plan 2001-2016, November 2005; policy CS18 of the Oxford Core Strategy 2026, March 2011 and policies HP9, HP10 and HP14 of the Sites and Housing Plan 2011-2026, February 2013 as cited on the decision notice no longer form part of the development plan. However, given the advanced stage of preparation of the LP at the time of the decision, reference is made to the then emerging policies RE2, G6, H14 and DH1 of the LP on the decision notice. These refer to the efficient use of land, residential garden land, privacy, daylight and sunlight and high quality design respectively. They cover broadly similar territory to the superseded policies and, so far as is relevant to the appeal proposal, are not fundamentally different. Therefore, I am satisfied that neither party would be prejudiced by this change in policy circumstances.
4. Policy HOS4 of the Summertown and St Margaret's Neighbourhood Plan, March 2019 (NP) is also cited on the decision notice. The NP remains part of the development plan and I have determined the appeal with reference to it.

Main Issues

5. The main issues are the effect of the proposal on (i) the character and appearance of the area and (ii) the living conditions of neighbouring residents having particular regard to noise.

Reasons

Character and appearance

6. 320 Banbury Road is an end of terrace dwelling situated approximately half-way within a row of Edwardian/Victorian houses between Portland Road and Lonsdale Road. It forms part of a perimeter block within the wider area on the eastern side of Banbury Road whereby there is a distinctive coherent layout to the mostly residential development. This generally consists of 2-3 storey houses fronting onto the street with a regular set back with longer rear gardens adding greenery and space between the built form. The layout reflects a clear distinction in hierarchy between the more formal, prominent front elevations of the dwellings in contrast to the secondary role of outbuildings and gardens, which are generally located to the rear of the dwellings. This results in a pleasant, well-ordered residential character and appearance to the neighbourhood.
7. The form and layout of No.320, although in use as flats, generally conforms with, and respects, the surrounding hierarchical layout. Furthermore, notwithstanding the presence of a larger than average annexe building within the rear garden, due to the remaining space and established planting, it nevertheless contributes positively towards the distinctive pattern of development.
8. The proposal would extend the existing detached annexe building within the lower portion of the garden in order to create a separate dwelling. Due to the monopitch roof, elongated depth and lack of street frontage, the resulting building would neither follow the traditional form and layout for dwellings, nor be commensurate with the scale, function or appearance of a domestic outbuilding. Consequently, it would be of a form and scale out of character with its immediate surroundings. Furthermore, due to its depth it would encroach further into a generally undeveloped garden area, thereby increasing the proportion of built form relative to the overall plot. This would harmfully diminish its spaciousness and greenery.
9. In addition, the proposal would sub-divide the original plot for 320 Banbury Road and introduce sizeable areas of hardstanding¹ for bin storage, cycle parking and access. In combination with the likely boundary treatments to demarcate these areas this would have the effect of compartmentalising the space into areas notably smaller than those in nearby surrounding gardens shown in the area overview plan².
10. Although I acknowledge that the siting of the structure towards the lower part of the rear garden would not be easily seen from nearby streets, it would nevertheless be apparent in private views from a number of surrounding properties. Furthermore, as it would be higher than the rear boundary wall, some glimpses of the structure might be visible from the churchyard of St

¹ Proposed Block Plan, Drawing no. P-03 & Floor Plans of the Annexe P-04B

² Area overview, Drawing no. P-71

Michael and All Angels Church which adjoins the site to the east, and through which there is a pedestrian route linking Portland Road and Lonsdale Road. I observed that the planting along the rear boundary when in full leaf provided shielding to the existing annexe building. Nevertheless, given the extensive glazing in the proposed rear elevation facing the rear boundary and the limited garden area, future residents would be less likely to retain the present level of boundary planting.

11. My attention is drawn to an appeal decision³ in which the Inspector gave consent for a single storey dwelling. However, the context of that proposal is some considerable distance from the appeal site and, unlike the scheme before me, had a commercial building to the rear of the site and adjoined a car park⁴. It follows that it has limited relevance as a direct comparison with the present case, which I have determined on its own merits.
12. Accordingly, I find that the proposal would diminish the feeling of spaciousness and disrupt the well-ordered prevailing pattern of development thereby resulting in harm to the character and appearance of the area. Therefore, it would fall short of a high quality design that creates or enhances local distinctiveness and would be contrary to policy DH1 of the LP.
13. In addition, it would conflict with policies RE2 and G6 of the LP which support the efficient use of land including residential development on garden land provided that the proposal is compatible with the site and responds to the character and appearance of the area. Furthermore, it would conflict with policy HOS4 of the NP which, although generally supportive of backland development, states that, amongst other matters, any attractive prevailing character of the area should be protected. These policies accord with paragraph 122 d) of the National Planning Policy Framework which stipulates that planning decisions should support development that makes efficient use of land taking into account the desirability of maintaining an area's prevailing character and setting (including residential gardens).

Living conditions

14. There is no dispute that a Certificate of Lawfulness⁵ exists for 320 Banbury Road confirming the lawful use of six flats within the main building. Notwithstanding that the appellants suggest that the annexe building has been used as a separate dwelling for a number of years, this has not been lawfully established. The Council accept that the existing building in the rear garden provides ancillary accommodation but has concerns that the creation of a new dwelling would intensify the use of this part of the plot and increase noise arising from access to it.
15. Although in practice the rear garden area and annexe building may have been mostly associated with the occupants of the ground floor flat, the evidence does not show that there are any planning or physical obstacles to the occupants of the other five flats from using the garden area or existing annexe building if the appellants so chose. This is reinforced by the shared amenity space shown on the existing block plan⁶. Although when I visited the property the building was not occupied due to construction work taking place, I noticed

³ Reference APP/G3110/A/11/2164332

⁴ Paragraph 4 of decision letter

⁵ Reference 17/01343/CEU

⁶ Drawing No. P-02A

that some bins were placed in the rear garden area in front of the annexe building. It follows that, in the absence of specific limitations to prevent it, bins and cycles could be stored to the rear of the building for the occupants of the flats in this location necessitating the use of the side passageway adjacent to 318 Banbury Road.

16. The proposal would retain six residential units overall at the appeal site which is likely to result in a broadly similar number of occupants to the lawful use. Furthermore, the physical access arrangements to the main house and the passage to the garden and rear building would remain. This precludes vehicular access.
17. The structure in the rear garden would be a modest one-bedroom dwelling which is unlikely to significantly increase the number of associated movements. The level of noise generated by pedestrian movements would be unlikely to disturb the residential occupants of the premises either side. I acknowledge that the regular movement of bins and cycles along the passageway to the rear has the potential to generate more noise. However, the side elevation to No.318 comprises a brick wall without doors or windows which would considerably reduce any impact. Overall, I am not assured that the proposal would be significantly different to the lawful use. On this basis, I have seen limited evidence to substantiate the Council's assertion that a self-contained dwelling to the rear would radically alter the existing level of activity⁷. Therefore, it is not shown that the proposal would result in material harm.
18. Accordingly, I find that the proposal is unlikely to generate a level of additional activity and consequent noise that would harm the living conditions of the neighbouring residents. Hence, in relation to this issue there would be no conflict with policies RE2 and G6 of the LP, or policy HOS4 of the NP which, subject to criteria, generally support the increased use of garden land for residential development. Neither would the proposal conflict with policies DH1 or H14 of the LP as these primarily refer to high quality design and placemaking and privacy, daylight and sunlight respectively.

Other matters

19. My attention is drawn to the amalgamation of flats 2 and 4 within the main building into one larger flat. This would remove two flats that currently provide limited internal space and below the minimum size normally sought for equivalent new dwellings. The amalgamated flat would exceed the minimum requirements.
20. The parties disagree as to whether formal consent would be required for works to amalgamate these units⁸. Either way, in the absence of the extension of the annexe building, there may be economic reasons that would make the retention of the existing layout more likely. Therefore, this element of the proposal would represent an improvement to the living standards of future occupants. However, the third floor flat⁹ with the smallest gross internal floor area would be retained which the appellant acknowledges¹⁰ is poorly laid out and offers a substandard sized kitchen. Overall, given the modest nature of the

⁷ Council's delegated report, Impact on neighbouring amenity, page 6 & Paragraph 5.9 Council's Statement of Case

⁸ Page 2, Appellants' Statement of Case

⁹ Existing Flat 6 and Proposed Flat 5 – 24.36 sqm, Floor areas, Drawing No. P-07

¹⁰ Page 3, Appellants' Statement of Case

proposal and extent of the benefits, it attracts limited weight in favour of the proposal.

21. Furthermore, although the appellants indicate that the flats in the main building would be provided with external garden space, the shared area on drawing no. P-04B would be dominated by the functional storage arrangements leaving little room for sitting out or garden activity. In addition, it is smaller than the shared amenity space shown on the existing block plan, drawing no. P-02A. As no specific details are provided for the current arrangements for bin and cycle storage for comparison, I cannot be certain that the proposal represents a notable enhancement to the living conditions of future occupants. Hence, overall, these factors attract little weight.
22. The site is adjacent to St Michael and All Angels Church, which is a grade II listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering planning proposals, decision makers should have special regard to the desirability of preserving listed buildings or their settings. The significance of the church lies in part in its aesthetic qualities which the list description refers to as an Early English Style. However, the proposed extension to the annexe building would be set back from the boundary with the church thereby retaining separation and the boundary treatment between the proposal and the modern extension at its western end. In the absence of evidence to suggest to the contrary, I have little basis to find that the development would harm the significance of the church.

Conclusion

23. Although I did not find harm in relation to the living conditions of the neighbouring residents, I nevertheless found that there would be harm to the character and appearance of the area.
24. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹¹. The proposal would add to the choice of housing in an accessible location and would make some modest improvement to existing housing stock. Nevertheless, the development plan requires new development to sufficiently respect the local character and context. The harm identified in relation to this would not be outweighed by the benefits of the proposal.
25. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹¹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.