



Appeal Decision

Site visit made on 11 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2020

Appeal Ref: APP/G3110/C/20/3249429

Land at 305 Marston Road, Marston, Oxford OX3 0EW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs C Munt against an enforcement notice issued by Oxford City Council.
 - The enforcement notice was issued on 21 February 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission the erection of an outbuilding (the "Outbuilding") which is in excess of the limits of permitted development and which has been designed and equipped for a use which is not incidental to the enjoyment of the dwelling house as such on the Land.
 - The requirements of the notice are:
Remove the Outbuilding from the land and all resulting and associated materials and equipment from the site within 26 weeks from the date the notice takes effect
 - The period for compliance with the requirements is 26 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is corrected by the deletion in the description of the allegation of the words "and which has been designed and equipped for a use which is not incidental to the enjoyment of the dwelling house as such on the Land".
2. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding which is in excess of the limits of permitted development at 305 Marston Road, Marston, Oxford OX3 0EW as shown on the plan attached to the notice and subject to the following condition:
 - 1) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 305 Marston Road.

Ground (b) – that the matters referred to in the notice have not occurred

3. The appellant argues that the structure on the land is not the erection of an outbuilding, but a use of the land, in that the structure complies with the definition of a caravan, as set out in The Caravan Sites Act 1968. The onus of

proof on an appeal on this ground lies with the appellant, with the relevant test being on the balance of probabilities.

4. The structure, which I shall refer to as the annex (as that is how it is shown on the gate leading to the garden), complies with the technical dimensions for a twin-unit caravan as defined in s. 13(2) of the 1968 Act. There is no dispute on this matter.
5. However, such caravans also need to comply with the criteria of s.13(1) of the Act, which says that a structure designed or adapted for human habitation which—
 - (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
 - (b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer), shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.
6. The appellant says that the annex was brought to the site and assembled in two parts, which were joined together, and that the whole annex rests on a base and can be moved if required. The Council's photographs show the unfinished annex, which appears as a shell of similar proportions to the finished structure, but was in the process of being finished internally with composite wood boarding, what appears to be OSB, and plasterboarding, whilst the external wood cladding had yet to be affixed. The presence of sawn pieces of insulating foam board on the floor in one of the photographs suggests that the insulation between the shell and the OSB was installed on site as well.
7. To my mind the work carried out on site to create the annex goes way beyond "assembly"; considerable construction work took place on site to make the structure into a habitable unit. I therefore consider that the annex does not comply with the criteria set out in s.13(1)(a) of the Act.
8. The question of whether a caravan can amount to a building operation is a question of fact and degree. Applying the normal tests for a building, there are three main considerations, and no one of them is decisive. In terms of size, the annex is the size of a small home, and I find that its size has the attributes of a building. In terms of the degree of attachment to the land, the annex rests on concrete blocks, about 1m apart, with a dampproof membrane between the underside of the structure and blocks. Services are attached by means of cables and pipes which enter or leave through the sides of the annex, and could be readily separated. However, there is a considerable degree of attachment by virtue of its own weight, sufficient to constitute a building operation.
9. In terms of permanence, it has clearly not been designed to be moved, and it has not been moved since it was erected. Whilst it may be possible to insert steel beams or similar under the structure and to lift it in one piece with a crane, in the absence of specific evidence on this point, I consider it likely that

structural damage would be caused in doing so. I therefore consider that the structure is a substantial degree of permanence.

10. Thus, taking all the considerations together, I consider that the annex amounts to a building operation rather than a change in the use of the land as argued by the appellant.
11. The second limb of the allegation is that the outbuilding has been designed and equipped for a use which is not incidental to the enjoyment of the dwelling house as such on the land. Although I have found that the development amounts to a building operation, it is important to examine all aspects of the allegation, because the deemed application subject of the ground (a) appeal flows from that.
12. The appellant argues that the annex has been occupied by members of the appellant's family, including her husband, daughter and son-in-law, and that the occupation has been in connection with the use of the house at 305 Marston Road. The appellant has referred me to the particular circumstances which have required separate sleeping accommodation for family members, including night shift work and health conditions. Whilst I note that the annex has all the facilities which would be expected in a self-contained dwelling, this does not prevent the annex from being used as accommodation ancillary to that of the main dwelling.
13. The Council has not submitted evidence sufficient to refute the appellant's claim that the annex has been used for ancillary purposes. I shall therefore use the powers under s.176 to correct the notice by deleting the words in the allegation relating to the use of the outbuilding. As it reduces the scope of the allegation, I am satisfied that no injustice would be caused to either party by my doing so.

Appeal on ground (c) – that the matters alleged do not constitute a breach of planning control

14. Following on from my finding that the annex represents a building operation, the appellant accepts that the building, due to its size, exceeds the criteria for it to be considered as permitted development under Class E of part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
15. No other permitted development rights exist to permit such a building, and no planning permission has been granted for it. Accordingly, the matters alleged in the notice constitute a breach of planning control, and the appeal on ground (c) fails.

Appeal on ground (a) – that planning permission should be granted

Procedural matter

16. The appeal on this ground makes it clear that the annex is intended to be occupied by the occupiers of the main dwelling, ancillary to its use. I shall therefore deal with this ground of appeal on the basis that the annex is solely to provide ancillary accommodation.

Main Issues

17. The main issues are:

- i) The effect of the development on the character and appearance of the surrounding residential area,
- ii) The effect of the development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Character and appearance

18. The annex is sited at the rear of a long garden in a residential area typified by semi-detached houses with long gardens, many of which have outbuildings in them of various sizes, designs and locations. There is a large outbuilding in the rear of the garden of the neighbouring property; whilst that sits in a double plot, it is nevertheless a substantial building close to the boundary with its neighbours. Tall trees in some of the nearby gardens, including the large willow to the rear of 301 Marston Road, limit views and provide green screening.
19. To my mind, neither the building next door, nor the annex subject of this appeal look out of place in such a context. The low-profile roof, and its position, tucked away at the rear of the garden, together with the tree screening I have referred to above, mean that it is not intrusive in the garden hinterland, and they appear as subordinate buildings.
20. The appeal site has one of the longer and wider gardens in the vicinity, and thus the annex does not look squeezed or the plot over-developed, in that a good sized garden remains to serve the occupiers of the house. The use of unpainted timber gives the annex a cabin-like appearance which reinforces its status as a subsidiary building. Accordingly, there is no need for it to reflect the scale, form or detailing of the dwellings along this part of Marston Road. As an ancillary building there would be no necessity to provide separate access or curtilage, and thus I consider that it does not look out of the place in the context that I have described above.
21. The Council argues that the appellant has not demonstrated that the house could not be adapted to provide the kind of accommodation to meet the needs of the occupiers. However, I consider that there is no reason to do so; on its planning merits, the provision of an ancillary building, subject to a condition restricting its use to that of ancillary accommodation, is acceptable, and requires no additional justification.
22. I therefore conclude on this issue that the annex does not result in harm to the character and appearance of the surrounding area, or conflict with Policies CP1, CP6 and CP8, of the Oxford Local Plan 2001-2016 (OLP) which respectively deal with general criteria for development proposals, the efficient use of land and density, and designing development to relate to its context. Nor would it conflict with Policy CS18 of the Oxford Core Strategy 2026 or Policy HP9 of the Sites and Housing Plan (2013) which in turn deal with urban design, townscape character and the historic environment.

Living conditions

23. The annex is sited close to the boundaries with the neighbouring residential properties, but, apart from the building in the rear garden on 301 Marston Road, it is well away from the houses themselves. As the building is single storey, the scope for overlooking of neighbouring gardens is limited by its height and the presence of fences, hedges and other outbuildings in the garden of No 301.
24. As an ancillary annex, the number of comings and goings and general activity around the building would not be significantly greater than those associated with the use of the house alone. Accordingly, I am satisfied that the annex would not materially harm the living conditions of neighbouring occupiers, or conflict with OLP Policy CP10 which deals with the siting of development to meet functional needs, including ensuring that the use or amenity of other property is adequately safeguarded.

Other matters

25. I have had regard to neighbours' concerns, including those relating to fire risk, which is a matter for Building Regulations, but these do not alter my findings.

Conditions

26. The Council has suggested a number of conditions. Those dealing with implementation and compliance with plans are unnecessary, as the development has already been carried out. As indicated above, I shall impose a condition to require that the annex remain as an ancillary to the residential use of the host dwelling, because an independent dwelling would not be acceptable in this location.

Conclusion on ground (a)

27. For the reasons given above, I conclude that the appeal should succeed on this ground, that planning permission should be granted, and that the enforcement notice should be quashed.

Appeals on grounds (f) and (g)

28. As the notice is quashed, it is unnecessary to deal with these grounds of appeal.

Overall conclusion

29. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
30. The appeal on grounds (f) and (g) do not therefore fall to be considered.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decision dated: 28 September 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

Land at: 305 Marston Road, Marston, Oxford OX3 0EW

Reference: APP/ G3110/C/20/3249429

Not to scale

