



Appeal Decision

Site visit made on 21 January 2021

by Eleni Randle BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2021

Appeal Ref: APP/F5540/W/20/3259508

Ground Floor Garden Flat, 53 Wilton Avenue, Chiswick, London W4 2HX

- 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 Mr & Mrs M & S Du Toit against the decision of Council of London Borough of Hounslow.
 - The application Ref 01211/53(GF)/P2 dated 16 April 2020, was refused by notice dated 1 July 2020.
 - The development proposed is retrospective planning application convert existing approved studio outbuilding into an ancillary unit for the sole use of the ground floor garden flat.
-

Decision

1. The appeal is allowed, planning permission is granted to convert existing approved studio outbuilding into an ancillary unit for the sole use of the ground floor garden flat at Ground Floor Garden Flat, 53 Wilton Avenue, Chiswick, London W4 2HX in accordance with the terms of the application, Ref 01211/53(GF)/P2, dated 16 April 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be maintained in accordance with the following approved documents: WA/SC/SB/PS02-1, WA/SC/SB/PS03-3, WA/SC/SB/PS05-1 and WA/SC/SB/PS04-2.
 - 2) The outbuilding shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Ground Floor Garden Flat, 53 Wilton Avenue.

Procedural Matters

2. There are notable discrepancies, between the parties, within the descriptions and details before me in terms of the retrospective nature/actual use of the development. This has resulted in a less than ideal starting point in that the submissions appear to merge potential enforcement issues and compliance with existing conditions on previous consents. For the avoidance of doubt, I have dealt with the appeal proposal as per the appellant's description within both the application form and statement of case i.e. not as a self-contained unit, but as an ancillary unit to the main residential dwelling.
3. I acknowledge the evidence which has been submitted by the appellant including tenancy agreements and statutory declarations relating to the current use of the appeal site as one planning unit. Unfortunately, I can attribute little weight to such information within this appeal given that this is neither an enforcement appeal nor an appeal for a certificate of lawfulness, or similar, which would be reliant upon evidence of that nature.

Main Issues

4. The main issues are i) whether the proposal is acceptable in principle, ii) the impact of the proposal upon the living conditions of neighbouring properties and iii) the impact of the proposal upon the amenities of prospective occupiers and the character of the area.

Reasons

Principle of the development

5. The appeal site benefits from planning consent¹ (the existing consent) for a building which was simply described as a single storey detached outbuilding to the rear of the flat in the development description. The consent granted was subject to a condition which stated: "*The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 53 Wilton Avenue*". It is, therefore, only the use of that building which falls to be considered within this appeal as well as the potential implications of its internal fittings in determining that actual use.
6. The delegated report for the existing consent notes objections which included concern regarding the outbuilding being utilised as residential as well as noting the rear access off Ashbourne Grove. In relation to both of these matters the Council acknowledged that a condition would be attached to any approval to ensure that the outbuilding was incidental to the main dwelling. This was applied to the consent, which was granted as outlined above, with the intent, presumably, of preventing the building from being occupied by a separate person not connected to the occupiers of the Garden Flat/a separate unit.
7. All aspects of the existing consent refer to *occupation* (indeed the delegated report referred to it as a *Granny Annexe* condition), not use, and I do not see, given the definition of development relating to internal changes outlined below, how the appeal proposal breaches that condition. The proposal is for an ancillary use to the main dwelling. As it stands the existing consent, and its conditions, create a fallback position for this appeal proposal which is a material consideration.
8. From the correspondence submitted by Hestons Residents Association it would appear that no floor plans were submitted, for the outbuilding, within the existing consent. The Council noted this in the delegated report but confirmed that they had sufficient information to proceed. In accordance with section 55 (2)(a)(i) of the Town and Country Planning Act 1990 (as amended) works which only affect the interior of the building shall not be taken to comprise development for the purposes of that Act. The internal changes to the appeal building do not, therefore, comprise development but may indicate its use.
9. The land already has a lawful residential use as part of the existing dwelling. The decisive factor is not whether the building would be used for purposes incidental to the main dwelling. It falls to assess whether use of the appeal building would be as a physically and/or functionally separate dwelling, or whether it would provide living accommodation that is integral to the use of the existing dwelling. This is the general finding within case law such as *Uttlesford DC v SSE & White* [1992]. The Council state case law² which concludes that a

¹ 01211/53(GF)P1 (6th June 2018) – (also granted consent for a single storey rear extension)

² *Gravesham BC v Secretary of State & O'Brien* [1982]

- building will become a separate dwellinghouse where it is self-contained with all the necessary living facilities and has resulted in the creation of a separate planning unit. Despite this the assessment as to whether use is ancillary, or a separate unit has been created, is a matter of fact and degree.
10. The appeal building would be used for sleeping purposes but its ability to be utilised for independent living purposes is, I find, very limited. The appeal site shares a postal address and services (water, heating, drainage and electricity). The submitted plans demonstrate, as seen during my site visit, that the appeal site does not have separate rooms. It essentially comprises one space, within which there was a bed, with a kitchenette (in the same room), very limited storage cupboards and an en-suite. The kitchenette does not benefit from full cooking facilities and would, I concur, allow at best basic re-heating in a microwave.
 11. In addition to this I find it key to this case that there is no living/lounge space. This, combined with the small, shared, courtyard space into which the outbuilding and the Garden Flat both face at close proximity, I find does not lend itself naturally to anything other than for a purpose which is ancillary to the main dwelling and occupied by connected parties (i.e. not as a self-contained unit of separate occupation). Such parties would share living, social and outdoor space. The proposal presents as one which would remain in single family occupation.
 12. A condition, as with the existing consent, would give the Council a controllable enforcement position on this to maintain control of the site in line with the consent granted. The use of the building would not create a new planning unit, it would not be distinct from or occupied for different or unrelated purposes to the use of the existing dwelling. It would remain within the same planning unit. Based upon the evidence before me I do not agree with the Council that the proposal should be assessed as a self-contained residential unit nor that it would result in an inappropriate form of development when taking into account the existing consent and the wording of the relevant condition as a fallback.
 13. Given my findings I do not find that London Borough of Hounslow Local Plan 2015 (LP) Policy SC4 is of direct relevance to the proposal given that it is not for new housing development. The proposal is consistent with LP Policy CC1 which seeks to secure development which sensitively responds to an area's character, LP Policy CC2 which requires proposals to have a positive impact on the amenity of current and future occupiers and LP Policy SC7 which supports improvement of existing residential properties (including outbuildings) where the proposals maintain the character of the area.

Living conditions of neighbouring properties

14. I do not consider that the proposed use as submitted would increase noise and disturbance through additional 'coming and goings' at different times of day given that the proposal will function, ultimately, as a single household. The provision of the proposed ancillary unit will not create a notable difference in activity. It would have little more impact than, for example, a standard house extension to accommodate an additional bedroom and thus I am satisfied that the proposal would not cause material harm upon neighbours from noise and disturbance.

15. Overall it is not considered that the proposal would create increased noise and disturbance which would be to the detriment of the living conditions of neighbouring properties. I therefore conclude that the development would be consistent LP Policy CC2 which requires proposals to function well in themselves and in their effect on surrounding areas and have a positive impact on the amenity of current and future occupiers.

Internal and Amenity Space and Character

16. For the reasons outlined above in relation to the first main issue the proposal is akin to an additional bedroom with an en-suite for the benefit of the Garden Flat. Given that it does not present as, nor lend itself to being, a self-contained unit as claimed in the reasons for refusal I do not find that internal space and amenity standards are applicable to the proposal.
17. Overall, I do not consider the proposal to fall to be assessed as new housing development/a new house with three habitable rooms or less to which Nationally Described Space Standards should apply. Furthermore, the delegated report for the existing consent confirms that LP Policy SC5 requires 5 sq./m of amenity space for a flat of this size and confirms that this is comfortably exceeded. Overall, I have nothing before me to suggest the proposal and its stated use would result in substandard accommodation as one planning unit.
18. Given that the proposal, in terms of physical built form, already benefits from planning consent (and the site being in residential use) I do not see how a proposal which ultimately relates to ancillary use within the residential site, which will function overall as a single planning unit, with no external changes can be classed as out of character for the prevailing pattern of development. As previously stated I do not find that the proposal results in a self-contained unit of accommodation and I do not find the proposal would result in use which would harm the character of the area.
19. The proposal would be consistent with LP Policy SC5 which requires proposals to demonstrate an appropriate standard of accommodation for future occupants, LP Policy CC1 which seeks to secure development which sensitively responds to an area's character, LP Policy SC7 which supports improvement of existing residential properties (including outbuildings) where the proposals maintain the character of the area and do not result in harm to the amenity of neighbouring residents and LP Policy CC2 which requires proposals to have a positive impact on the amenity of current and future occupiers.

Other Matters

20. I note an objection from Hestons Residents Association and the general concern as to "beds in sheds". The wording of the original condition, as outlined above, does not specifically exclude use as a bedroom or similar as per the more robust condition example which is submitted within their comments³. For this site, the condition simply requires the approved outbuilding to be in ancillary use as discussed within this decision. The wording of condition 01211/53(GF)P1 cannot now be changed. I have dealt with the remaining matters earlier within this decision letter.

³ Email from Nick Marbrow dated 21st June 2018 (08:03)

21. The Council's reasons for refusal do not state conflict with the Residential Extensions Guidelines Supplementary Planning Document 2017 (SPD), however, it is raised within the Council's report with regard to principle of the proposal. The SPD, as acknowledged by the Council, is a set of guidelines and each case must be assessed on its own merits.
22. The SPD states that *usually* (my emphasis) primary living accommodation would not be allowed. The word usually does not apply a blanket resistance to such proposals. It falls to consider actual impact within the SPD's overarching objectives. Given that I have found the building's use to be incidental to the main house, with limited scope for independent living purposes (which can be further controlled by condition), and that there would be no impact upon neighbours I do not find that the proposal conflicts with the objectives of the SPD in this case.

Conditions

23. Whilst the application is retrospective, I have imposed a condition requiring the development to be maintained as per the submitted plans in order to define and control the consent which is granted. Given that this is a new, standalone, consent I have for the avoidance of doubt re-applied the condition which requires the proposal to remain as ancillary to prevent the building from being occupied by a separate person or household not directly connected to the occupiers of the Garden Flat i.e. as a self-contained, new, unit.

Conclusion

24. For the reasons outlined above, and taking account all other matters raised, I conclude that the appeal should be allowed subject to conditions.

Eleni Randle

INSPECTOR