



Appeal Decision

Site Visit made on 9 December 2020

by S Thomas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2021

Appeal Ref: APP/Z5630/W/20/3256065

41 Thrigby Road, Chessington, KT9 2AH

- 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 Martin Jefferies against the decision of Royal Borough of Kingston Upon Thames.
 - The application Ref 19/02372/FUL, dated 25 September 2019, was refused by notice dated 9 June 2020.
 - The application sought planning permission for erection of outbuilding to rear without complying with a condition attached to planning permission Ref 17/10409/HOU, dated 19 December 2017.
 - The condition in dispute is No 4 which states that: 'The outbuilding hereby permitted shall be occupied solely for purposes incidental to the occupation and enjoyment of the application property as a single dwelling and shall not be used as a separate unit of accommodation or for sleeping accommodation, unless otherwise agreed in writing by the Local Planning Authority .
 - The reason given for the condition is: The establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and lead to an unsatisfactory relationship between independent dwellings.
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Decision

1. The appeal is dismissed.

Background

2. Planning permission was granted by the Council in 2017 for the erection of an outbuilding to the rear of the appeal property¹. The internal layout of the submitted plans indicated use as a home gym, shower and storage². Condition 4 stipulated that the outbuilding should be occupied solely for purposes incidental to the occupation and enjoyment of the property as a single dwelling, and required that it not be used as a separate unit of accommodation or for sleeping accommodation. The justification for the condition was that the establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and lead to an unsatisfactory relationship between independent dwellings.
3. The main appeal property is currently in use as a House in Multiple Occupation (HMO). The appellant wishes to use the rear outbuilding as additional sleeping

¹ 17/10409/HOU

² Proposed Outbuilding Drawing No CO_MJ_01

accommodation as part of the HMO and has sought to vary Condition 4 of planning permission 17/10409/HOU to remove the restriction relating to use of the building as sleeping accommodation. No changes are proposed regarding the restriction preventing use as a separate unit of accommodation.

4. During the course of the appeal, the main parties were consulted on any implications arising from the *Finney* judgement³ in terms of the appropriateness of the Section 73 procedure⁴. I have taken into account the comments received in my determination of this appeal.

Main Issue

5. The main issue is whether the condition is necessary, relevant to planning and to the development, enforceable, precise and reasonable, having regard to local policy.

Reasons

6. As noted, the approved plans that accompany the original 2017 planning application show the outbuilding as an indoor gym, shower room and store to function as an incidental outbuilding, for use by the occupiers of the main dwelling. However, at my visit, I observed that the gym area was being used as an office and the store area was equipped as a small kitchen, fitted out with kitchen cupboards, sink and a free-standing fridge freezer. The photographs in the Design and Access Statement also show a washing machine.
7. The outbuilding has habitable windows on the front elevation which overlook the appeal property and neighbouring dwellings. The outbuilding, if used for permanent accommodation with separate and self-contained facilities, is likely to materially change its character. It is likely to be used more intensively, with increased activity, noise and disturbance, greater movements to and from the building, associated with its use through longer periods of the day. This would be readily apparent from the neighbouring property No 39, as well as other neighbouring dwellings.
8. Given the proximity between the windows of the outbuilding and that of the neighbouring dwelling No 39, there is potential for loss of privacy and overlooking to neighbouring occupiers. The existence of a boundary fence would not mitigate this problem effectively. Moreover, the use of the building for sleeping and living accommodation would be incongruous within the context of the rear gardens of these properties.
9. Consequently, I consider that varying the condition in the terms proposed would have certain harmful consequences and would also potentially materially alter the approved development. Whilst the proposal would utilise an existing building to provide additional living accommodation, this cannot be at the detriment of ensuring a high standard of amenity for existing occupiers.
10. Overall, I find that the condition is necessary, relevant to planning and to the development, enforceable, precise and reasonable, in the interests of preserving the amenities of neighbouring occupiers. I conclude that varying the condition would result in harm to the living conditions of adjacent occupiers in conflict with Policy DM10 of the Royal Borough of Kingston Upon Thames Core

³ *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868

⁴ Section 73 of the Town and Country Planning Act (1990)

Strategy (2012). Amongst other things, this policy seeks that development proposals have regard to the amenities of neighbours.

Conclusion

11. For the above reasons, the appeal is dismissed.

S Thomas

INSPECTOR