



Appeal Decision

Site visit made on 3 March 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/W4705/W/22/3291267

Granny Flat, 17 Victoria Avenue, Ilkley LS29 9BW

- 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 John Ogden against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 21/02620/VOC, dated 14 May 2021, was refused by notice dated 31 August 2021.
 - The application sought planning permission for Conversion and extension of triple garage to form a granny flat without complying with a condition attached to planning permission Ref 11/00135/HOU, dated 18 March 2011.
 - The condition in dispute is No. 3 which states that: the accommodation hereby permitted shall only be occupied in connection with and incidental to the occupation of the existing dwelling at 17 Victoria Avenue, Ilkley, LS29 9BW and shall at no time be severed and occupied as a separate, independent dwelling unit.
 - The reason given for the condition is: the establishment of an independent residential dwelling would give rise to an over-intensive use of the site and lead to unsatisfactory relationship between independent dwellings. To accord with Policies UR3 and D1 of the Replacement Unitary Development Plan.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Replacement Unitary Development Plan as referred to in the reason for the condition is no longer in place. In making my decision, I have therefore had regard to the relevant policies of the current development plan, namely the Bradford Core Strategy Development Plan Document (2017).

Background and Main Issue

3. The initial planning application granted consent for, the conversion and extension of a triple garage to form a granny flat. A condition was imposed requiring that the accommodation shall only be occupied in connection with and incidental to the occupation of the existing dwelling at 17 Victoria Avenue, Ilkley, LS29 9BW and shall at no time be severed and occupied as a separate, independent dwelling.
4. The main issue is therefore whether the condition is necessary and reasonable having regard to living conditions.

Reasons

5. The building subject to the appeal is identified as a granny flat to the side and rear of 17 Victoria Avenue, which is a large, detached dwelling set in spacious landscaped grounds. It is located in a residential street of properties of various styles and sizes.
6. The granny flat is a detached building. It is smaller in size and set back from the main dwelling, appearing subordinate and of a lesser stature. There is a small patio area adjacent to the granny flat, however, there is no physically defined separation between the patio and the remainder of the garden. In physical terms, it appears incidental to the main dwelling. This is also exemplified through the shared vehicular and pedestrian accesses with the main dwelling.
7. At the rear, the granny flat, is in very close proximity to the main dwelling. Were the condition to be removed and an independent dwelling to be created, I consider that due to this proximity, there would be an unacceptable impact on the privacy of both the existing occupants of the host dwelling, 17 Victoria Avenue, and the occupants of the resultant dwelling. I accept that, as the appellant highlights, this physical arrangement exists at present, however this is on an incidental rather than independent basis.
8. The amenity space and access arrangements that would ensue have also not been clarified to a satisfactory degree and although the appellant highlights that apartment complexes often have shared parking and gardens, the property including the granny flat in this instance is markedly different to an apartment complex, particularly as it forms one planning unit. There is no suggested mechanism before me to secure satisfactory access, parking and amenity space that would remain in perpetuity for both properties.
9. The appellant comments that they would not rent out the property if they considered their own amenities would be compromised. I accept that as the owner, the appellant has this element of control, however ownership may change over time and one person's assessment of any impacts may be different to another.
10. There is also no sound planning reason why a temporary planning permission should be imposed as I do not consider a temporary consent would be needed to assess the effect of the development and there are insufficient land use planning reasons to justify a temporary consent.
11. Therefore, based on the evidence before me, I conclude that the condition is necessary to make the development acceptable in planning terms to ensure that satisfactory living conditions are in place and the development complies with Policy DS5 of the Bradford Core Strategy Development Plan Document (2017). This policy requires, amongst other things, that development proposals should not harm the amenity of existing or prospective users and residents. I find the condition to be reasonable in all other respects.

Other Matters

12. The Council have outlined that the application has been made following an alleged breach of the condition. Whether or not the condition has been breached is not a matter before me in the appeal. Although I agree that the

granny flat is not suitable to be occupied as an independent and separate dwelling.

13. One of the issues that has been raised is whether renting the granny flat to someone not related to the occupants of the host dwelling would fall within the confines of the existing condition. This is not however what is before me in the appeal, which is for the removal or variation of a planning condition. To lawfully conclude on the matter would be beyond my powers in this appeal and there are other mechanisms, such as a certificate of lawfulness or planning enforcement proceedings that would rule on such a matter.
14. The appellant has outlined that it is not proposed that the annex is to become an independent dwelling but will remain incidental to the occupation of the principal dwelling. This is, however, what is permissible under the current consent and planning conditions and would therefore not be a reason to remove or vary the condition.
15. The appellant has referred to the fact that the Council have applied council tax to the granny flat as a separate dwelling. Council tax is however separate to the planning process. Such evidence may be relevant in any future application for a certificate of lawfulness or any enforcement proceedings, but this fact does not lead me to conclude in favour of the appeal.
16. The appellant has referred to planning permission¹ granted in 2018 for a detached dwelling to be constructed to the side of no. 20 Victoria Avenue, directly opposite the appeal site. Although I do not have full details of the case, it is clear that this dwelling has a different arrangement to its neighbours than the appeal property and the granny flat. It also sits within its own defined, independent curtilage, with its own access, parking and amenity space. Given these differences it is not directly comparable to the appeal property and is thus of limited weight in the appeal.

Conclusion

17. For the reasons given above, and having had regard to all other matters raised, I conclude that the condition should be retained in its current form and accordingly the appeal is dismissed.

A M Nilsson

INSPECTOR

¹ 17/06546/FUL