

Appeal Decision

Site visit made on 16 August 2022

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/F5540/D/22/3296347

62 Burnaby Gardens, Chiswick, London, W4 3DP

- 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 Piotr Niklewicz against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00180/62/P3 dated 28 January 2022, was refused by notice dated 25 March 2022.
 - The development proposed is to erect an outbuilding and use as a granny annex ancillary to use of the existing dwelling (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for erection of an outbuilding and use as a granny annex ancillary to the use of the existing dwelling at 62 Burnaby Gardens, Chiswick, London, W4 3DP in accordance with the terms of the application, Ref 00180/62/P3, dated 28 January 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans ref. Location plan, Block/Site Plan, Plan and Elevations dated 21 June 2021.
 - 2) 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 62 Burnaby Gardens, Chiswick, London, W4 3DP

Main Issues

2. There are two main issues. Firstly, whether the principle of a residential annex, ancillary to the use of the main dwelling house, would be acceptable; and secondly, the effect of the use of the outbuilding for ancillary residential purposes on the living conditions of neighbours at 58 and 60 Burnaby Gardens with respect to noise and disturbance.
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Reasons

3. The Council's concern regarding the principle of development is in essence that, due to the separation of the annex from the main dwelling and the provision of a bathroom and kitchenette and the use of the building for sleeping, it would be tantamount to a new dwelling.
4. However, the outbuilding which is in place is situated within the enclosed rear garden of the dwelling and is clearly visible from it. It appears as an ancillary building within the garden and although there is a rear pedestrian gate serving the property this is a similar arrangement to other neighbouring dwellings and does not in my view imply a separate use. The building is currently used for domestic storage. It has a shallow pitched roof and is about the size of a large double garage which is clearly subservient to the dwelling, a sizeable, traditional semi-detached house.
5. The fact that the accommodation would be both separate from the main dwelling and capable of independent occupation with limited reliance on the house does not necessarily result in it being inappropriate development as suggested by the Council. Many "granny annexes" take this form and the issue of whether such development would be tantamount to a new dwelling, with a realistic potential for separate occupation unrelated to the host dwelling, is a matter of planning judgement based on the site layout and other material considerations.
6. In this case the annex is required to provide accommodation for an elderly and infirm relative. The evidence includes significant detail regarding this person's health conditions and housing need, including a letter from the G.P. Moreover, the appellant explains why suitable accommodation could not be readily provided in the main dwelling or through extensions to it and this is supported by what I saw at my site visit. On the basis of the evidence, taken as a whole, I am therefore satisfied that what is proposed is, as applied for, an ancillary residential annex.
7. The Council refers to its Supplementary Planning Document, Residential Extension Guidelines, adopted in 2017, which provides guidance on outbuildings, including their use. However, this appears to contradict Policy SC7 of the Local Plan 2015 – 2030 (LP), adopted in 2015, which states that extensions, including outbuildings, will be supported in principle and advises that planning conditions will be used to prevent their use as self-contained dwellings. Such a condition is suggested by both the Council and the appellant. This would be in accordance with national planning policy which is informed by, amongst other things, the judgement in *Uttlesford District Council v Secretary of State for the Environment and White [1992]* in which it was found that, even if accommodation provides facilities for independent day to day living, it would not necessarily become a separate planning unit from the main dwelling, or an independent dwelling which would be a matter to decide on the facts of each case. This judgement postdates the *Gravesham Borough Council v Secretary of State and O'Brien [1982]* judgement quoted by the Council.
8. I conclude on the first main issue that the use of the outbuilding as ancillary residential accommodation would be acceptable in principle and because the building would be ancillary to the main dwelling the principle of the

development would not conflict with LP Policies SC7, CC1 or CC2 which expect residential extensions to, amongst other things, maintain the character of the area and promote high quality urban design.

9. Turning to the living conditions of neighbours at Nos 58 and 60 Burnaby Gardens, the outbuilding is enclosed on three sides by a high, close boarded fence, it is of modest height and would have no material effect on outlook from either property or from others in the surrounding area. With respect to noise and disturbance, I do not share the Council's concerns or assertions. The annex would house an elderly person and the day to day comings and goings associated with this use, over the short distance between the house and the annex associated would be no more disturbing to neighbours than similar movements if it was used for other purposes ancillary to the main dwelling, such as a home office or gym, or the usual use of the garden for leisure and recreational purposes.
10. I therefore conclude on the second main issue that the proposed residential annex would have no materially harmful effect on the living conditions of neighbours at Nos 58 or 60 Burnaby Gardens or any other neighbours, with respect to noise or disturbance. In consequence, there would be no conflict with LP Policies CC1 or SC7 which, taken together, resist extensions, including outbuildings, that would result in harm to the amenity of neighbouring residents.
11. Turning to conditions, the annex is substantially complete and so a commencement condition is not necessary. However, as suggested by the Council, a condition requiring it to be finished in accordance with the approved plans is necessary to protect the character and appearance of the area and to provide certainty. As set out above, a condition to ensure that the annex is not used other than as ancillary residential accommodation is also necessary to provide certainty and to protect the character and appearance of the area. I shall use the wording suggested in model condition 47 of saved Appendix A of the otherwise cancelled *Circular 11/95: The Use of Conditions in Planning Permissions*.
12. The appeal is accompanied by a draft s106 undertaking. This is incomplete and so cannot be taken into account but since the occupation of the annex can be controlled through a planning condition, a s106 undertaking is not necessary.
13. For the reasons set out above and having regard to all other matters raised, including the representations of third parties regarding the planning history at the appeal site and the number and density of dwellings in Burnaby Crescent, I conclude that the appeal should be allowed.

KE Down
INSPECTOR