



Appeal Decision

Site visit made on 21 November 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2022

Appeal Ref: APP/Y5420/W/22/3301513

55 Windmere Road, Muswell Hill, London N10 2RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Matt and Marion Groshong against the decision of the London Borough of Haringey.
 - The application Ref HGY/2021/3196, dated 28 October 2021, was refused by notice dated 24 December 2021.
 - The application sought planning permission for the demolition of the existing garage and building of the new garden studio without complying with a condition attached to planning permission Ref HGY/2017/2017, dated 22 December 2017.
 - The condition in dispute is No 4 which states that: "The development hereby permitted shall be occupied solely for purposes incidental to the occupation and enjoyment of the existing dwelling at No. 55 Windmere Road and shall not at any time be sold off, sub-let or used as a separate unit of residential accommodation or for any commercial purpose".
 - The reason given for the condition is: "to ensure that the outbuilding remains as ancillary accommodation to the existing dwellinghouse in the interests of the living conditions of neighbouring residential occupiers".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The development has already been completed. The Appellant seeks to replace condition 4 with one that would broaden the use of the annex to include short-term holiday lets. Consequently, the main issues are the effect of varying the condition on neighbouring occupiers in terms of noise, disturbance and privacy and on the functionality of the existing dwelling.

Reasons

3. The annex, the subject of this appeal, is at the end of the rear garden of a terraced dwelling. The garden is a private and enclosed space, overlooked by the annex and the rear elevation of the main dwelling. The annex includes a multi-use space that incorporates a kitchenette and pull-down bed. The annex also includes a bathroom and an external door that affords direct access onto Muswell Avenue behind.
4. Condition 4 precludes the use of the annex as a separate dwelling. The annex does not include private garden space and is located in close proximity to existing dwellings, especially the rear garden of the host dwelling. It would

therefore be unsuitable to be used as an independent dwelling due to its size and proximity to surrounding dwellings. Accordingly, condition 4 still serves a useful purpose and remains necessary.

5. The annex is used as extra space for the main dwelling and therefore is incidental to the enjoyment of the dwellinghouse. The annex includes large glass doors that overlook the Appellants' rear garden. The annex has been occasionally rented to the public as an 'Airbnb', leading to one noisy incident. Although, most previous paying guest have been quite and considerate, this is no guarantee of the behaviour of future visitors.
6. The use of the annex for short-term lets would result in a substantial intensification of its use. The frequency of visitor attendance, and level of turnover associated with such a use, could be high. A holiday use would be likely to be attended by visitors who cause anti-social activity including the likelihood returning to the premises at anti-social times. This type and level of activity would be starkly different to the current use of the annex and its existing intrinsic connection to the main dwelling. Given its proximity to nearby housing and gardens, such activity would be likely to cause noise and disturbance to neighbouring occupiers. Consequently, the commercial use of the annex would be incompatible with the residential character of the site and its surrounding area. Furthermore, the proximity of the rear garden of the host dwelling to the annex and its intervisibility, would erode the functionality of the family dwelling and the use of its garden.
7. The large glass doors of the annex also overlook a rear first-floor window of the neighbouring property of No 53. This view would be largely unobscured and over a comparatively short distance. The extent of overlooking would be moderately harmful to neighbouring occupiers. This coupled with the proposed commercial nature of the annex would result in a material loss of privacy. Consequently, the use of the annex for short-term holiday lets, would be likely to cause noise and disturbance, and a moderate loss of privacy, to the surrounding residential properties.
8. The Appellants' measures to regulate the behaviour of existing guests would rely on occupiers of the main house being alert, present and prepared to intervene in the event of disturbance being caused. It also relies on visitors responding positively to such efforts. I am therefore unconvinced that this approach would adequately regulate the behaviour of guests.
9. Accordingly, the proposed variation of the condition would conflict with policy D14 of the London Plan and policies DM1 and DM53 of the Haringey Development Management DPD 2017 (HDM). These seek, among other matters, for development to contribute to the character and amenity of a local area and for visitor accommodation to not result in an adverse impact on residential amenity. Nevertheless, the proposal would comply with policy H9 of the London Plan and HDM policy DM10 as the existing house would not be removed from existing housing stock, and preserve the appearance of the Muswell Hill Conservation Area
10. For the above reasons, the appeal is dismissed.

Ben Plenty

INSPECTOR