



Appeal Decision

Site visit made on 10 January 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/D3505/W/22/3299761

22 Angel Lane, Glemsford CO10 7RX

- 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 Steve Allen against the decision of Babergh District Council.
 - The application Ref DC/21/06417, dated 1 July 2021, was refused by notice dated 25 January 2022.
 - The application sought planning permission for "householder application – conversion of existing outbuilding to form annexe accommodation ancillary to main house" without complying with a condition attached to planning permission Ref DC/20/01646, dated 10 June 2020.
 - The condition in dispute is No 3 which states: *This permission shall only authorise the use and occupation of the accommodation for purposes incidental and ancillary to the principal dwelling known as 22 Angel Lane; and does not permit the use of the accommodation for a separate household.*
 - The reason given for the condition is: *The proposed annexe constitutes a physically separate unit of dwelling accommodation which would not be acceptable under the established policies of Local Plan and NPPF and having regard to its particular relationship with the principal dwelling and the potential for noise, activity and disturbance detrimental to the amenity of that principal dwelling were the development to be occupied as an unrelated dwelling.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged, new case law has emerged in the form of Freddie Reid vs SSLUHC [2022] EWHC 3116 (Admin) that is of direct relevance to the appeal proposal. Both parties were afforded time to comment on the Judgement and therefore have not been prejudiced in this regard. It is incumbent on me to determine the appeal on the most up-to-date information and therefore it is necessary to include this Judgement as a main issue. I have therefore determined the appeal on this basis.

Background and Main Issues

3. Planning permission¹ for the conversion of an existing outbuilding to form annexe accommodation ancillary to the main house included a condition (condition 3) that required the use and occupation of the accommodation to be restricted for purposes incidental and ancillary to the host dwelling known as

¹ Planning Ref: DC/20/01646

22 Angel Lane, and to not permit the use of the accommodation for a separate household.

4. The Council firstly consider that the condition cannot be deleted by virtue of a s73 application and instead the appellant would need to apply for full planning permission. Secondly, the condition is necessary to ensure that the annexe is not occupied independently of 22 Angel Lane, which would result in harm to the character and appearance of the surrounding area, and the living conditions of the occupiers of neighbouring properties.
5. The appellant objects to the condition as they are currently paying separate Council Tax on the building, and they want to be able to rent the building to recover some of the costs associated with constructing the building and paying separate Council Tax. They also consider that any harm to the living conditions of the occupiers of neighbouring properties associated with the occupation of the building would not differ depending on who occupies it.
6. Taking the above background into consideration, the main issues are:
 - whether the proposal can be determined under s73 of the Town and Country Planning Act 1990 ('the Act'), with particular reference to John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868 ('the Finney Judgement') and Freddie Reid vs SSLUHC [2022] EWHC 3116 (Admin) ('the Reid Judgement'); and
 - whether the condition is reasonable and necessary in respect of the effect of the proposed development on:
 - a) the character and appearance of the surrounding area; and
 - b) the living conditions of the occupiers of neighbouring properties, with particular reference to an intensification of use and access.

Reasons

Whether the Proposal can be Determined under s73 of the Town and Country Planning Act 1990

7. In the Finney Judgement, an existing condition was varied to increase the height of two wind turbines from 100m to 125m in height, which also required the description of development to be amended as it included the turbines' height. The Courts established that an application under s73 of the Act may not be used to obtain permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of development for which the original permission was granted.
8. The description of development contained within the original planning approval is "householder application – conversion of existing outbuilding to form annexe accommodation ancillary to main house". The removal of condition 3 would not conflict with the description of development.
9. In the Reid Judgement, a s73 application sought to remove an existing condition that restricted the use of 34 self-catering holiday units to holiday accommodation and not any other purpose, including within Class C3 of the

Use Classes Order². The Council argued that by seeking to remove the condition, it would enable the units to be used as permanent residential dwellings, which would be contrary to the description of development. The Judge was not convinced that the removal of conditions gives rise to the same considerations as their variation/addition.

10. The Judge found that when a condition is removed, the operative part of the permission remains intact, albeit in an unconditional way. If the condition restricting the units to holiday accommodation was removed, the way the development could change would have nothing to do with the description, but because the condition preventing the benefit of the Use Classes Order would be removed. The Judge held that what can be done with the use of the land may not be exhaustively written into the description but may arise by the operation of law (i.e. a lawful change of use to another purpose within the same Use Class by the operation of s55(2)(f) of the Act). Therefore, it is the decision-maker's function to consider, as a matter of planning judgement, the planning merits of removing the condition(s). The Reid Judgement is of direct relevance to the appeal proposal as it involves the removal of a condition controlling the use of the existing building.
11. In reference to the first main issue, the removal of condition 3 would not conflict with the description of development and therefore the proposal can be determined under s73 of the Act. However, the removal of the condition would allow the occupation of the building in an uncontrolled way under Class C3 of the Use Classes Order by virtue of s55(2)(f) of the Act. I therefore need to determine whether the potential use of the building as an independent Class C3 dwellinghouse would be contrary to the development plan.

Character and Appearance

12. The appeal site comprises a semi-detached, two-storey dwelling set back from Angel Lane by a substantial front garden that is also used for the parking of vehicles. To the rear of the dwelling is a long garden that slopes down towards the rear boundary shared with a dwelling on Weavers Drive. The appeal site is located on the northern side of Angel Lane. The dwellings on this side of the lane are predominantly two-storey, either semi-detached or terraced, and follow a similar building line. The plots of these dwellings are also of a comparable size and shape. Within the rear gardens of these dwellings are various single storey domestic outbuildings.
13. Adjacent to the rear boundary of the appeal site, and spanning the full width of the garden, is a single storey detached outbuilding with a covered patio area to one side, that has all the facilities to be occupied as an independent dwelling. The building is not highly conspicuous from public vantage points due to the arrangement of the surrounding dwellings, together with the single storey height of the building and the sloping nature of the land. The appellant states that it is not their intention to subdivide the garden to create a separate garden for the annexe. However, an independent dwelling would require an area of private amenity space and therefore the rear garden would need to be subdivided. Therefore, the occupation of this building as an independent dwelling would result in backland development. The detached nature of the building and its limited scale, together with its siting, would result in an alien feature that

² The Town and Country Planning (Use Classes) Order 1987 (as amended)

would not reflect, and would be harmful to, the prevailing character of development within the surrounding area.

14. In reference to part (a) of the second main issue, condition 3 is reasonable and necessary to protect the character and appearance of the surrounding area. The removal of the condition would therefore be contrary to Policies CN01, HS28 and CS15 of the Babergh Local Plan 2011-2031 Core Strategy & Policies (Part 1 of New Babergh Local Plan, adopted 2014 (LP) that, amongst other things, require proposals to pay particular attention to the scale, form and nature of adjacent development and the environment surrounding the site, and the scale and nature of the proposal should make a positive contribution to the local character, shape and scale of the area. It would also be contrary to paragraph 130 of the National Planning Policy Framework (NPPF) that seeks, amongst other things, to ensure that developments are sympathetic to local character and history, including the surrounding built environment.

Living Conditions of the Occupiers of Neighbouring Properties

15. The existing building is located at the far end of the host dwelling's rear garden. It has two windows and glazed patio doors in the southern elevation that directly face the rear elevation of the host dwelling. The windows and door open directly onto the host dwelling's garden. However, the submitted drawing indicates that the patio doors would be removed and one of the windows would be made smaller. The bedroom, living room and kitchen all occupy one room, with a separate wet room. A glazed door within the side elevation provides access onto a relatively small, covered patio area that is separated from the remainder of the garden by a transparent post and rail fence.
16. The occupation of the annexe by persons linked to the host dwelling would likely result in its occupants undertaking day-to-day activities together as a household and they would likely use the facilities of the host dwelling from time-to-time. The level of activity associated with the existing use would therefore be akin to a single dwelling. In contrast, the occupiers of the annexe would lead independent lives, with separate routines and comings and goings, and with separate comings and goings of their visitors, deliveries etc. This would lead to an increase in activity when compared to a single dwelling and ancillary annexe.
17. Access to the annexe is by an existing path located in close proximity to the boundary shared with 20 Angel Lane and its front door, as well as the host dwelling. Therefore, the increase in activity from the use of the annexe as an independent dwelling would adversely affect the living conditions of the occupiers of neighbouring properties to a significant degree. Concern has been raised regarding overlooking by the occupiers of the annexe into the rear windows of neighbouring properties resulting in a loss of privacy. However, this would be at an oblique angle, and would occur whether the building was occupied ancillary to the host dwelling or as an independent dwelling. Furthermore, the Council has not raised concern in this regard.
18. In reference to part (b) of the second main issue, condition 3 is reasonable and necessary to protect the living conditions of the occupiers of existing dwellings, with particular reference to an intensification of the use and access. The removal of the condition would therefore be contrary to Policy HS28 of the LP that states, amongst other things, that planning applications for infilling or groups of dwellings will be refused where the proposal represents

overdevelopment to the detriment of residential amenity. It would also be contrary to paragraph 130 of the NPPF that seeks, amongst other things, to create places with a high standard of amenity for existing and future users.

Other Matters

19. Concerns have been raised regarding the Council's handling of the planning application and the payment of Council Tax for an annexe. However, these matters have no bearing on my consideration of the planning merits of the development.
20. The appellant has suggested that he is willing to enter into a planning obligation to prevent the annexe from being sold separately from the host dwelling, if the condition was deleted. I have not been provided with such a mechanism and therefore I do not need to consider this matter further.

Conclusion

21. For the reasons given above, having considered the development plan as a whole and all other material considerations, I conclude that the appeal is dismissed.

A Berry

INSPECTOR