



Appeal Decision

Site visit made on 31 January 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2023

Appeal Ref: APP/U4610/W/21/3288088

46 Dickens Road, Coventry CV6 2JT

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Christine Moore against the decision of Coventry City Council.
 - The application Ref S73/2021/0893, dated 17 March 2021, was refused by notice dated 1 November 2021.
 - The application sought planning permission for a granny flat for person registered under CSDPA without complying with a condition attached to planning permission Ref S/1985/1348, dated 26 June 1985.
 - The condition in dispute is No2 which states that: That the extension the erection of which is hereby permitted shall not be used other than by members of the same family occupying the dwelling hereby extended and shall in no case be used as a separate dwelling.
 - The reason given for the condition is: That the internal layout of the extension as indicated relies on the interdependence of the existing and proposed accommodation and the joint use of private gardens and vehicular access to the premises and the result of any severance of these elements would, in the opinion of the Council as local planning authority, be a substandard unit of accommodation.
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Decision

1. The appeal is allowed and planning permission is granted under s73 of the Act for a granny flat for person registered under CSDPA at 46 Dickens Road, Coventry, CV6 2JT in accordance with application Ref S73/2021/0893, dated 17 March 2021, without compliance with condition number 2 previously imposed on planning permission S/1985/1348, granted on 26 June 1985, subject to the following condition:
 - 1) The granny flat extension shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 46 Dickens Road, Coventry CV6 2JT.

Procedural Matters

2. The planning application form referenced planning permission G/C/32692/B as that to which the relevant condition was attached to. The alternative reference of S/1985/1348 appears on the Council's Decision Notice. The Council have since confirmed that both references relate to the original consent.
3. The description of the original development referred to a person registered under CSDPA (the Critically Sick and Disabled Persons Act). The Council have used the alternative description of 'erection of granny flat for disabled person'. However, despite that my decision results in a new planning permission, there

is no provision under s73 of the Act to change the description of development. Accordingly, I have used the original description in my decision.

4. The appellant confirms that the granny annex has a registered address of 46a Dickens Road and its own entrance. It is subsequently suggested that, in conjunction with separate utility bills and its effective use as a separate dwelling since the 1980's, the independent occupation of the unit was well established. However, it is not for me under a s78 appeal to determine whether or not an existing development is lawful. To that end, it is open to the appellant to apply for a determination under s191 of the Act 1990 and my determination of this appeal under s78 does not affect the issuing of a determination under s191 regardless of the outcome of this appeal.

Background and Main Issue

5. The appeal relates to a granny annex constructed in the 1980s as an extension to 46 Dickens Road. The purpose of the annex was to provide accommodation for the appellant's elderly relation who was then registered under the Chronically Sick and Disabled Persons Act 1970. Due to the connection of the accommodation and shared amenity and parking facilities, occupancy of the extension was restricted for ancillary purposes on the basis that it would not otherwise meet a suitable standard of accommodation as an independent unit.
6. The extension is shown to include a bedroom, bathroom, kitchen and living room. According to the appellant, since its construction and until recently, it was occupied in accordance with the occupancy restriction, but now lies empty. The appellant also confirms that an internal link to the main house exists and is proposed to be retained. I have determined the appeal on that basis.
7. The appellant clarifies that the intent in removing the condition would be to enable the letting to any person and not therefore be constrained to a family member who is disabled or chronically ill. Reference is also made to letting the extensions as a flat.
8. In consideration of the proposal to remove or vary the occupancy restriction, the main issues raised by the Council's decision notice relate to the effects of the proposal on the character and appearance of the locality and the living conditions of prospective occupiers of both the annex and the dwelling at No46. The Council's position arises from the concern that the removal of the condition would effectively create a separate dwelling.
9. However, Section 55 (3)(a) of the Town and Country Planning Act 1990 (the Act) makes it clear that 'the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used'.
10. As a development described as a 'granny flat', the original development did not, and cannot, result in a planning permission for a new independent dwelling or the creation of a new planning unit. Moreover, there is no capacity within the ambit of s73 of the Act to grant planning permission for development that lies outside the scope of the original description. The use of the granny annex as an independent residential unit, including use as a separate flat, would require a separate planning permission. It would lie outside the scope of this appeal and that constraint is relevant to consideration of the proposed removal or variation of the condition contested.

11. Accordingly, the main issue is whether the condition is reasonable and necessary having regard to the nature of the accommodation and the character and appearance of the locality.

Reasons

Accommodation

12. Although the original description includes a reference to the personal circumstances of the then intended occupier, the operative effect of the planning permission was to grant permission for accommodation that was ancillary to the residential occupancy of No46. Notwithstanding the description of the development, it is condition 2 that defines the terms of its occupancy.
13. In its form, the condition restricts use of the extension to a family member living as a single household with the occupiers of the main dwelling at No46. Contrary to the appellant's interpretation, it does not prevent its use by an occupier of the main dwelling, nor any person related to them.
14. As the extension provides a degree of accommodation that could substantially cater for independent living without consideration to such matters of parking and amenity space, I find a condition restricting its use as ancillary to the main house to be reasonable and necessary. However, as worded, the condition imposes a significant restriction to the options for the formation of a single household at No46.
15. Following changes to the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), greater flexibility has been provided for the use of buildings as single dwellinghouses. This includes their use as small houses in multiple occupation, for instance.
16. Without prejudice to any necessity to assess the effects of such occupancy, if applicable, I find the requirement for occupiers to be related to be unduly onerous. In the circumstances, it would prevent the appellant making best use of the combined accommodation at No46 through taking in lodgers or live-in carers, for example, or by other means of providing shared accommodation by people regarded as forming a single household, related or otherwise.
17. Accordingly, I find a condition permitting occupation by any person forming part of a single household would be reasonable, relevant to land use planning and the specific development. Additionally, it would be sufficiently precise to define the terms of the permitted occupation and to enable its enforcement.
18. As a single household use, the Council's concern in relation to shared amenity space would not arise. Although any attendant increased occupancy of the building may also increase parking demand locally, this would be no different to the capacity for the former arrangement to do so. The proposed change to the wording of the condition would not materially change that position.
19. For the reasons above, I find that, within the constraint of the original permission providing only ancillary accommodation, the ability to form a single household through wider opportunities than those restricted to same family members would be a reasonable proposition. A condition limiting occupation of the extended dwelling to a single household would therefore accord with Policies H3, DE1 and AC3 of the Coventry City Council Local Plan [2017] (the

CLP) as they require high-quality residential environments which create sustainable communities, respect the character of the area, and provide adequate levels of parking. It would also meet the relevant tests for planning conditions in the National Planning Policy Framework.

Character and appearance

20. Pursuant to my finding in relation to the necessity for occupation of the extension to remain ancillary to the use of No46, as an application made under s73 of the Act, the Council's concerns as to the effects of the extension on the character and appearance of the locality as a separate residential unit fall away.
21. As accommodation built in the form of an extension, and to remain in that use, it would be consistent with Policies H3 and DE1 of the CLP in regard to maintaining a high-quality residential environment and respecting the character of the area.

Conditions

22. The Planning Practice Guidance¹ makes clear that, in addition to any new conditions, decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Aside from the occupancy condition, only a commencement of development condition was imposed. It is not therefore necessary to include any other conditions.

Conclusion

23. For the reasons given, the appeal is allowed.

R Hitchcock

INSPECTOR

¹ Paragraph: 040 Reference ID: 21a-040-20190723