



Appeal Decisions

Site visit made on 29 November 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal A: APP/N5090/C/22/3290613

87 Marshalls Close, London N11 1TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Daiva Kofmanaite against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/1405/21, was issued on 8 December 2021.
 - The breach of planning control as alleged in the notice is the use of the rear garden outbuilding as a self-contained dwelling.
 - The requirements of the notice are:
 1. Cease the use of the outbuilding as a self-contained residence
 2. Permanently remove all kitchen facilities including cookers, sinks and food preparation areas from the outbuilding.
 - The period for compliance with the requirements is 6 months.
 - The appeal was made on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B: APP/N5090/W/21/3290006

87 Marshalls Close, London N11 1TG

- 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 Daiva Kofmanaite against the decision of London Borough of Barnet.
 - The application Ref 21/5072/RCU, dated 21 September 2021, was refused by notice dated 18 November 2021.
 - The development proposed is described as 'change of use of outbuilding to separate living accommodation'.
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Decisions

1. Appeal A: The appeal is allowed and the enforcement notice is quashed.
2. Appeal B: The appeal is allowed and planning permission is granted for use of existing outbuilding as a residential annexe at 87 Marshalls Close, London N11 1TG in accordance with the terms of the application Ref 21/5072/RCU, dated 21 September 2021 and the plans submitted with it, subject to the following condition:
 - 1) The building shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 87 Marshalls Close, London N11 1TG.

Preliminary Matters

3. The description of the Appeal B proposal in the planning application form is 'change of use of outbuilding to separate living accommodation'. However, the decision notice issued by the Council and the appeal form both refer to 'Use of existing outbuilding as a granny annexe (Retrospective Application)'. Moreover, the appellant has suggested a condition which would restrict the building to ancillary use, which would be consistent with the reference to an annexe. Given the evident agreement regarding the proposed use, I have approached the appeal on the basis that permission is sought for use of the existing outbuilding as an annexe. I have referred to it as a 'residential annexe' rather than a 'granny annexe', since there is plainly no intention that its use should be limited solely to a person who could be described as a 'granny'.
4. It is important to note that this is different to the use alleged in the enforcement notice, which is use as 'a self-contained dwelling'. There is no suggestion in that wording of accommodation to be used as an annexe or in any respect ancillary to the house at 87 Marshalls Close. Moreover, it is clear from the Council's appeal statement and the background information submitted that its concern is that it is being used as an independent living unit.
5. I raised this matter with the appellant, and was advised as follows:
 - The Appeal B proposal is for ancillary granny annexe accommodation;
 - The appellant's case in relation to Appeal A, ground (d) is that the building has been used as ancillary ('granny annexe') accommodation, and not as separate, self-contained accommodation;
 - The appellant considers that the allegation of use as a self-contained dwelling made in the Enforcement Notice is wrong.
6. The Council was invited to comment on these matters but has not done so.
7. Drawing these threads together, it is clear that Appeal A concerns an alleged use as a self-contained, independent dwelling, whereas Appeal B concerns a proposed use as accommodation ancillary to the residential use of 87 Marshalls Close. These are two different things. It is also clear that the appellant disputes the use alleged in the enforcement notice. This claim falls squarely within the ground in section 174(2)(b) of the Act, which is concerned with whether or not any breach of planning control which may be constituted by the matters stated in the notice has occurred. I have therefore approached Appeal A on the basis that the appellant is pursuing ground (b) in addition to the grounds listed in the header above. Since that goes to the heart of the allegation in the notice, I will consider that ground first.

Appeal A – the enforcement notice appeal

Ground (b)

8. The notice concerns the use of an outbuilding. This was constructed around 2015 following the granting of a Certificate of Lawful Use or Development¹ issued relating to a building proposed for use as a sunroom, games room, study and a gym with an associated shower. An investigation by the Council in 2016, which included a site visit, concluded that, while the building was being

¹ Ref 15/02605/192

inhabited by a family member, there were no cooking facilities. This meant that the building was not a dwelling for planning purposes and there was no breach of planning control. Since that time, cooking facilities and kitchen units have been added. This, the Council argues, means that it is now a self-contained residence. The Council's concern is that it is no longer occupied in connection with the main house.

9. The appellant argues that the building has not been used as a self-contained dwelling but as ancillary 'granny annexe' accommodation. The burden of proof falls on the appellant to demonstrate their case, on the balance of probability.
10. When I viewed the building, it had all the facilities necessary for day-to-day living. The rooms included a kitchen/living room, bathroom and bedroom. A further room, while not laid out as a bedroom, would be capable of that use, and is labelled as such in the submitted existing floorplan. Thus, in physical terms, the building has the key facilities normally to be found in a dwelling. However, that does not show how it has been used. Whether or not it is occupied as a self-contained dwelling, independent from the main house, requires a fact and degree assessment.
11. It is clear that the building has been inhabited for some years in one form or another, perhaps since it was built in around 2015. The Council's 2016 investigation concluded that the building was occupied by the appellant's son as ancillary accommodation.
12. The information provided by the appellant indicates the following:
 - The appellant's son and his partner now live in the main house
 - The appellant lives in the appeal building
 - It appears that one other person lives in the house some of the time. The appellant says 'My relative stays in the house average 2-3 nights a week'. No other detail is provided.
 - I am told that a family friend also lived in the house for a period, but left permanently in June 2022.
13. The Council does not dispute the appellant's claims regarding occupancy of the property. The precise point at which the cooking facilities were added is disputed, but there is no doubt that they were in place when the notice was issued. There is no further information regarding precisely how the accommodation is use, such as to the extent to which facilities or space in the main house are shared. It seems probable to me that the appellant generally cooks within the outbuilding, given the facilities it contains.
14. Although clearly separate from the main house, the appeal building is located very close to it with a doorway facing the side of the house. Consequently, in physical terms, it has an intimate association with the house. The annexe is a single storey building, subservient to the house in terms of scale. It is within the rear garden of No 87, a garden which appears to be used by the occupants of both the main house and the outbuilding. The garden is not split in any way to define a separate area and nor is there any separate vehicular or pedestrian access serving the appeal building. The Council expresses a concern that the outbuilding could be rented out separately in the future, but does not suggest that that has occurred to date. The Council does not dispute that the

outbuilding and main house are primarily occupied by members of the same extended family. While none of these factors is decisive, in combination they suggest a unit that is more likely than not to function as an annexe to the main house rather than as an entirely separate residential unit.

15. I have noted the suggestion from an interested party that the house at No 87 has been rented out. However, I have little detail of this and attach little weight to it. It is not an allegation made by the Council and the evidence from both main parties suggests that members of the same extended family (the appellant and her son and his partner) occupy the main dwelling and the outbuilding, even if other people have been in occupation as well at times. Other people living at the property in addition to members of the appellant's family would not, on its own, show the creation of a separate primary residential unit.
16. Viewed as a whole, the evidence suggests to me, on the balance of probability, that, notwithstanding the facilities within the outbuilding, it is not used as an independent dwelling. Rather, the house and garden at No 87, including the outbuilding, comprise a single planning unit, and the use of the outbuilding is part and parcel of the residential occupation of that unit. Thus, while physically the outbuilding may be said to be 'self-contained' in that it has all the facilities necessary for day-to-day living, the particular use alleged in the notice has not occurred.
17. I have considered whether the allegation in the notice should be corrected to more accurately reflect the actual use of the building, using my powers under section 176(1)(a) of the Act. This would bring the allegation into line with the use sought under Appeal B. However, it would be a fundamental change in the allegation, such that it could cause the appellant to reconsider the grounds of appeal and/or cause both parties to re-evaluate their cases. Accordingly, I am not satisfied that I could make such a change without causing injustice.
18. In any event, my decision on Appeal B is to grant planning permission for use of the building as a residential annexe. It follows that if I were to amend the notice to allege the same thing, I would grant planning permission for that same use on ground (a) and quash the notice². Consequently, no purpose would be served by correcting the allegation in the notice, since it would be quashed in either event.
19. For the reasons given above, I conclude that the appeal should succeed on ground (b). Accordingly, the enforcement notice will be quashed. In these circumstances, the appeal on grounds (a), (d) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Appeal B – The planning appeal

The use proposed

20. As outlined above, I have approached this appeal on the basis that planning permission is sought for use of existing outbuilding as a residential annexe.

² There is also the theoretical possibility of the notice being quashed due to success on ground (d), but the practical outcome would be the same.

Main issues

21. The main issues are:

- The effect of the development on the living conditions of neighbouring occupiers; and
- Its effect on the character and appearance of the area.

Living conditions

22. The annexe is a single storey building. It has a triangular footprint, which allows it to fit within an area of garden between the main house and the neighbouring No 86. It is located close to the boundary to No 86 and protrudes slightly above the high fence that runs between the properties. It is some distance from the boundary to No 88, to the other side.
23. The Council is concerned at the scale of the unit and the fact that it is detached from the house. However, notwithstanding the facilities it contains, it is not excessive in scale for ancillary accommodation in my judgement. Its location very close to the main house, with an entrance door opposite the house, means that it is intimately associated with that dwelling and neighbouring occupiers are unlikely to be aware of comings and goings between the main house and the annexe. Used as an annexe, I do not see that noise or disturbance is likely to be excessive. The evidence before me does not show that harm has occurred due to noise or disturbance to date.
24. For these reasons I find no harm to the living conditions of neighbouring occupiers. Consequently, there is no conflict with Policy D4 of the London Plan 2021, policies CS1 and CS5 of the Council's Core Strategy, policies DM01 and DM02 of the Council's Development Management Policies DPD or the Council's Sustainable Design and Construction SPD 2016. Together, these policies seek, amongst other things, to ensure that development is well-designed to appropriate standards, such that the amenity of residents is protected.

Character and appearance

25. The building already exists, and the Council did not seek its removal in the enforcement notice it issued. Thus, there is nothing to suggest that the building would be removed, regardless of the outcome of this appeal. In terms of built development, therefore, the development does not affect the appearance of the site. While the Council's says that the use of the building as primary living accommodation is contrary to the normal pattern of development in the area, I do not see that its use gives rise to any harm to the character or appearance of the area, given its ancillary nature and proximity to the main house.
26. The Council suggests that the use could lead to additional garden paraphernalia. However, any additional garden paraphernalia arising from use as an annexe is unlikely to be of such a scale as to have any material effect on the character or appearance of the site, given that such items are normally to be found in gardens.
27. For these reasons I find no harm to the character or appearance of the area. Consequently, there is no conflict with the aims for design and local character within Policy D4 of the London Plan 2021, Policy CS5 of the Core Strategy and Policy DM01 of the Development Management Policies DPD.

Other Matters

28. The Council's *Residential Design Guidance* SPD states that an annexe must not have a separate entrance, should be internally connected to the rest of the house and should not include a separate kitchen. However, such general guidance must be applied with regard to the circumstances of the case. This is not a proposal to build a new annexe, but a proposal to use an existing building as a residential annexe, and I am not persuaded that the fact that it is not joined to the house makes it unsuitable for that use. Indeed, given its intimate relationship to the house, it seems to me that its impact is little different to that of an extension. As I have already indicated, on the facts of this case, the kitchen does not show that the building is being used as a separate dwelling and I am not persuaded that it causes harmful planning impacts.
29. The Council argues that there is no justification or demonstration of need for the development. However, since I have concluded that the development is not harmful, it is not necessary for the appellant to justify the scheme in terms of need.

Conclusion and conditions

30. For the reasons given above I conclude that the development is not harmful and find no conflict with the development plan policies cited by the Council. This leads me to conclude that the proposal accords with the development plan as a whole and that the appeal should be allowed. I have attached a condition restricting the use of the building to use ancillary to No 87, to prevent harm to the living conditions of neighbouring occupiers and to ensure that the use of the building reflects what has been applied for. I have not attached a condition requiring the development to be carried out in accordance with the submitted plans, given that it has already been carried out.

Peter Willows

INSPECTOR