



Appeal Decision

Site visit made on 15 July 2024

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7TH August 2024

Appeal Ref: APP/B0230/D/24/3341255 68 Waller Avenue, Luton LU4 9RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Mohammad Razak against the decision of Luton Borough Council.
 - The application Ref is 23/01323/FULHH.
 - The development proposed is the erection of a rear outbuilding to use as a 2 bed annexe (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a rear outbuilding to use as a 2 bed annexe (retrospective) at 68 Waller Avenue, Luton LU4 9RR in accordance with the terms of the application, Ref 23/01323/FULHH, subject to the following conditions:
 - 1) The building hereby permitted shall not be used other than as part of or for purposes incidental to the residential use of the dwelling at 68 Waller Avenue, Luton LU4 9RR and shall at no time be occupied as a separate dwelling.
 - 2) The building hereby permitted shall not be occupied unless and until the window on the rear (southeastern) elevation is fitted with obscured glazing, and no part of that window less than 1.7 metres above the floor of the room in which it is installed is capable of being opened.

Preliminary matters

2. The description of the proposed development, as set out above, is different to that set out on the application form. The amended description was agreed between the appellant and the Council at application stage and has been used by both parties in their submissions. I therefore also use it for this decision.
3. At my site inspection I noted that the building as built is slightly taller than indicated on the submitted plans, particularly at the back. Bearing in mind that no plans are legally necessary for retrospective applications¹, and that all concerned appear to have been aware that the proposal relates to the existing building, I will consider the appeal on that basis rather than on the basis of the submitted plans.

¹ Article 7(1)(c) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

Main issues

4. The main issues are:

- i) Whether the proposal would be greater than reasonably required to serve as annexe accommodation;
- ii) The effect of the proposal on the character and appearance of the local area; and
- iii) The effect on living conditions at neighbouring properties, particularly in terms of outlook, privacy, noise and disturbance.

Reasons

Annexe

5. The appeal building sits at the end of No 68's rear garden with pedestrian access only - through the house or a narrow path to the side of the house or possibly via a narrow, shared rear walkway. There is a previous permission for an outbuilding to provide a playroom, store and shower here. Instead, a larger building has been constructed, providing a living room, 2 bedrooms and a bathroom.
6. The Council's concern is about a lack of justification of both the scale of the building and its functional link with the principal dwelling. I agree with this concern to the extent that, if this sizable outbuilding was to be used as a separate dwelling it would substantially intensify use of this plot. This would potentially cause issues in regard to local character and peoples' living conditions - including those of occupiers of the main house, the new dwelling and neighbouring properties.
7. The appellant is clear, however, that the proposal is intended to provide annexe accommodation rather than a separate dwelling. He confirms a need for this accommodation for a family member, for health reasons. This is supported by a recent Doctor's letter. Although large enough to be used as a separate dwelling, the building is proportional to and subsidiary to the size of the larger main house and the bedrooms are fairly small. Overall, it is of a reasonable size for the provision of supplementary accommodation. The structure is close to and closely associated with the main house. It shares the same, relatively small garden area and parking area. It could potentially be partitioned off with a separate pedestrian access, but this is not the expressed intention or detail.
8. The Council raises a specific concern about the possible provision of kitchen facilities, such as a cooker. The distinctive characteristic of a dwellinghouse is its ability to afford those who use it the facilities required for day-to-day private domestic existence. The *Uttlesford* case², however, confirms that there is no reason in law why the provision of facilities for a degree of independence (such as bedroom, bathroom, lavatory, small kitchen, somewhere to sit and own front door) should consequently create a separate planning unit – and thereby a separate dwelling. This is a matter of fact and degree to assess on a case by case basis. I see no clear reason why some kitchen facilities should not be provided for annexe accommodation here.
9. Weighing up these various factors and recognising the Council's legitimate concerns, I am satisfied that the proposal should be taken as submitted. The

² *Uttlesford District Council v Secretary of State for the Environment and another* - [1991] 2 PLR 76

use of a condition to secure this is dealt with below. I conclude that the proposal is reasonably required to serve as annexe accommodation in accordance with Luton Local Plan 2011-2031 (LLP) policy LLP19(B) and the National Planning Policy Framework (the Framework).

Character and appearance

10. The Council's concern in this respect seems to relate back to the potential use as a separate dwelling. It accepts that the building is not readily visible from within the public domain and that there are no material implications for the local street scene. The building can of course be seen from neighbouring properties. I note that some neighbours raise concerns about unfinished concrete block walls. By the time of my site visit, however, the building had been rendered and painted acceptably. The building is of simple design and good quality and does not overly crowd the plot.
11. I conclude that the building does not harm local character and appearance. It accords in this respect with LLP policies LLP1, LLP19 and LLP25 and the Framework, which aim to secure high quality design with the scale, mass, layout, design and external materials of annexes being consistent with and proportionate to the dwelling and streetscape.

Living conditions

12. The appeal building is higher than shown on the proposed plans, particularly at the back - as seen from the rear windows and gardens of the houses at 14, 15 and 16 Malham Close. It is, however, still a low single storey building, set back from the ends of those gardens and far enough away from the houses themselves so that it is not overbearing or overly intrusive in their outlook and should not cause undue loss of light. In its location at the end of No 68's garden, it would likewise have little effect on outlook or light at the neighbouring properties to either side. Neighbour's privacy can be adequately protected by fencing or other boundary features and by the obscure glazing of a high level rear bathroom window.
13. Concerns are also raised about increased noise and disturbance. Use of the building as annexe accommodation, however, should not lead to a notable increase in this respect. Any such nuisance that may arise could still be dealt with under other legislation.
14. I conclude that the proposal does not and should not have any unacceptable impact on neighbours' living conditions. It also therefore accords with LLP policies LLP1, LLP19 and LLP25 and the Frameworks' general aim to ensure that development does not adversely affect the amenity of nearby occupiers.

Conditions

15. A condition limiting use of the building is needed so that it does not become an independent dwelling, because the potential impacts of such a use have not been assessed here. I have used wording now recommended by the Inspectorate instead of the Council's suggested wording. The Council suggests a limit to 'incidental' use only but this could prevent use for accommodation such as bedrooms and a living room. I consider that this condition would be enforceable and should provide an adequate safeguard. I see no need for an additional condition preventing the planning unit from being split, as this would

effectively duplicate control. A condition requiring obscure glazing of a rear, high level, bathroom window is required to protect neighbours' privacy.

16. There are several other standard or suggested conditions which are not justified here. The usual 3 year commencement condition is not needed because the development has been carried out. As there are discrepancies between the built development hereby approved and the submitted plans, there can be no condition specifying the approved drawings. Finally, I do not see adequate justification for the Council's suggested requirement of 1.8m high fencing to the side boundaries. There are walls and fences in place at present and others can be erected by either the site owners or their neighbours as may be considered necessary in the future.

Conclusion

17. The proposal accords with the development plan for the area, taken as a whole. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR