



Appeal Decision

Site visit made on 14 October 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/U4610/W/24/3341591

54 Humphrey Burton Road, COVENTRY, CV3 6HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dr Galyna Khudyakova against the decision of Coventry City Council.
 - The application Ref is PL/2023/0001601/RVC.
 - The application sought planning permission for the erection of a garden room without complying with a condition attached to planning permission Ref HH/2021/1769, dated 15 October 2021.
 - The condition in dispute is No2 which states that: The Garden Room hereby permitted shall only be used for purposes incidental to the enjoyment of the dwelling known as 54 Humphrey Burton Road and shall not be used as primary living accommodation or for the purpose of any trade or business.
 - The reason given for the condition is: To safeguard the amenities of nearby occupiers in accordance with Policy DE1 of the Coventry Local Plan 2016.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether condition 2 is reasonable and necessary.

Reasons

3. The appeal site consists of a semi-detached dwelling and an outbuilding located to its side. The property has a small rear garden which is overlooked by both buildings. The main building has been extended with a single storey rear extension and a large rear dormer window, both increasing overlooking of the rear garden and reducing the size of the garden.
4. The condition was imposed in consideration of the living conditions of neighbouring occupiers due to the confined nature of the site. Local Plan (LP) policy DE1, requires development to be high quality and to respond to the physical context of the site. This therefore requires housing to provide good quality accommodation including in terms of internal and external space and in meeting matters such as providing suitable privacy.
5. During my visit I observed the relationship of the rear garden to both buildings and undertook an internal inspection of the outbuilding. The outbuilding includes a fitted kitchen and separate bathroom facility and suitable facilities for it to function as a separate dwelling.

6. The submitted layout plan shows that the unit would include two bedrooms. Although the Council suggest that the unit is small, at slightly under 50sqm, it would exceed the Nationally Prescribed Space Standards for one person accommodation and is just short of the requirement to be accommodated by two people. The unit appeared to be well arranged and relatively spacious so that the limited shortfall below 50sqm would not create a poor-quality form of accommodation if occupied by up to two people.
7. Nonetheless, the proposed dwelling would not have access to a separate outside space for recreation and social activities. The rear garden is too small to be subdivided and is overlooked by both the main house and the outbuilding from habitable room windows. Accordingly, occupiers of the outbuilding would either only have access to a substantially overlooked garden or would have no access to a garden at all. This arrangement would mean that users of the garden would have an absence of privacy by being overlooked by an independent home in conflict with LP policy DE1.
8. Consequently, the condition, requiring the outbuilding to only be occupied for a use incidental to the enjoyment of the main dwelling, continues to serve a useful purpose.

Public Sector Equality Duty

9. The Appellant asserts that the application has been made to assist the City Council in providing living accommodation for refugees of the war in Ukraine. The Government supports the temporary housing of Ukrainian refugees in Britain while people have been displaced by the war. A letter of support has also been provided from the Council's Housing officer who identified that the building would be ideal for a refugee Ukrainian family.
10. People from within a specific race group have protected characteristics. Refugees by reason of race can be regarded as a protected group despite being a dispersed group. In my assessment of the effect of the proposed development on Ukrainian refugees seeking temporary accommodation, I have had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010 (EA).
11. The EA sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations. I have therefore afforded weight to the rights of refugees in that providing suitable housing would foster good relations and remove disadvantages suffered by a protected group in advancing equality of opportunity, as required by the PSED. The proposal would enable the outbuilding to be occupied by a Ukrainian refugee family providing accommodation for a family in need. Nevertheless, even with weight applied to the benefit of the proposal in this regard, this matter does not amount to a material consideration of sufficient magnitude to outweigh the primacy of, and conflict found with, the development plan.
12. Whilst maintaining its objection, the Council has suggested the addition of two alternative conditions if deemed to be appropriate. These would require the outbuilding to be accommodated by refugees only and to then revert back to an incidental use once this alternative use ceases and would limit occupancy to two people. However, such conditions would not address the identified conflict with policy and would not include an end date for the temporary use to cease

and therefore fails to provide adequate certainty. Also, the conditions could not be effectively enforced against both in terms of type of occupier staying at the property or with regard to the number of occupants requiring frequent surveys to ensure compliance. Accordingly, these conditions would not meet the tests of paragraph 56 of the National Planning Policy Framework.

Conclusion

13. Therefore, for the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR