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## Appeal Decision

Site visit made on 31 January 2025

by **G Ellis BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 February 2025

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**Appeal Ref: APP/Z3635/D/24/3352570**

**10 Stuart Way, Staines-upon-Thames, TW18 1EP**

- 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 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr George Sigalas against the decision of Spelthorne Borough Council.
  - The application Ref is 24/00824/RVC.
  - The application sought the variation of conditions 2 and 3 relating to planning permission 18/00848/HOU to allow the existing outbuilding within the rear garden to be used as an ancillary annexe.
  - The conditions in dispute are: -
    - 2) *The outbuilding be used only for purposes incidental to the main dwellinghouse and shall not be used as separate habitable accommodation.*
    - 3) *No permanent cooking facilities shall be installed within the outbuilding without the prior written consent of the Local Planning Authority.*
  - The reasons given for both conditions is: - *To safeguard the character of area and the amenity of adjoining properties.*
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### Decision

1. The appeal is allowed, and Planning Permission is granted for the erection of an outbuilding, at 10 Stuart Way, Staines-upon-Thames, TW18 1EP, in accordance with the terms of the application 24/00824/RVC without compliance with condition 3 previously imposed on planning permission 18/00848/HOU and subject to the following conditions: -
  - 1) That no further openings of any kind be formed in the rear or side elevations of the outbuilding hereby permitted without the prior written consent of the Local Planning Authority.
  - 2) The proposed building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwelling.

### Main Issue

2. The main issue is whether the conditions are necessary and reasonable, and the effect that removing or varying the conditions would have on the character of the area and the living conditions for the occupiers of the neighbouring properties.

### Reasons

3. Planning permission was granted for the outbuilding in 2018 (Council reference with 18/00848/HOU). From the information before me, it is not clear what the building was originally used for. Prior to that approval, certificates of lawful use

were refused in relation to an outbuilding being used for a gym, and ancillary accommodation.

4. The appeal property comprises a semi-detached house with the outbuilding sited to the rear of the garden extending across the full width. It is a single-storey, flat roof structure. Internally, it is primarily a single space with an enclosed bathroom. There are kitchen facilities along one side comprising cupboards, sink, fridge and a washing machine, but no installed cooking equipment. To the front elevation, to the garden, is the entrance door and two windows.
5. The proposed variation to the conditions is to enable the outbuilding to be used as an annexe to be occupied by the appellant's family. The Council argue that it is a separate unit of habitable accommodation which is unacceptable in this location.
6. I accept that with the addition of cooking facilities the building could provide all of the facilities necessary for day-to-day living. However, this in itself does not necessarily mean it is a separate dwelling, as noted by the case law cited by the appellant<sup>1</sup> it is a matter of fact and degree.
7. The outbuilding has no physical connection to the host property, but they share services and utilities, they directly face each other with intervening garden space. There is no separate access to the outbuilding and whilst the Council referred to a side gate, there is a garage structure and extension to the side of the property, and on my site visit, access was through the house. The outbuilding is a subservient structure to the main house, and the appellant explains that there would be a functional connection between the two with the occupants engaging in activities in the main house. Consequently, I am satisfied that the operation of the site could continue as a single residential unit with the annexe being an integrated part.
8. The Council indicate that the outbuilding was being marketed to be rented out as a residential studio. I have not been provided with any evidence, but in any event, that is not what is sought. The proposed variation to condition 2 would maintain the provisions that it is not used as separate habitable accommodation but allows for an ancillary rather than incidental use. The appellant has also referred to a number of Council's decisions where the wording 'ancillary' has been used in the conditions. Whilst similar, incidental, does not allow for 'annexe type' accommodation. Moreover, if used as a separate dwelling, it would be a material change of use requiring a separate grant of planning permission. Therefore, there would be a number of safeguards against its use as independent accommodation, which both parties, and I agree, would not be appropriate for the site or locality.
9. It is an existing building, and the external appearance would remain the same. Neighbouring properties have outbuildings of a variety of sizes in their gardens, and it is not visible from the road. The use may alter the regularity or the timings of people moving between the two buildings, although the occupiers would be part of a single household. The distance across the garden, which has boundary treatments and vegetation, is limited. The Council have not provided any evidence which demonstrates the additional kitchen facilities would generate a particular harm other than the concerns relating to being a separate dwelling.
10. From my observations on site and the information before me, there is nothing to suggest that the level of noise or disturbance would be substantially different to the

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<sup>1</sup> Uttlesford DC v SSE & White [1992]

existing use or that would be reasonably experienced in a residential area. As such, I do not find that there would be significant harm to the neighbouring occupiers or that there would be a change to the character and appearance of the area.

### **Conditions**

11. As set out in paragraph 57 of the National Planning Policy Framework planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
12. In light of my findings above I am satisfied that the revised wording to condition (2) and the deletion of condition (3) would not lead to material harm or conflict with the policies EN1 or EN11 of the Spelthorne Core Strategy and Policies DPD (2009), regarding residential amenity including noise, and respecting the character of the area. I, therefore, do not consider that they are necessary
13. The Planning Policy Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose those that I consider remain relevant.

### **Conclusion**

14. For the reasons outlined above and having regard to the development plan and other material considerations, a new planning permission is granted. The disputed condition 2 is revised to refer to an ancillary use and condition 3 is deleted. Accordingly, the appeal is allowed.

*G Ellis*

INSPECTOR