



Appeal Decision

Site visit made on 25 March 2025

by **K E Down MA(Oxon) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 April 2025

Appeal Ref: APP/N1920/D/25/3359899

59 Cowley Hill, Borehamwood, Hertfordshire, WD6 5LQ

- 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 Ms I Belap against the decision of Hertsmere Borough Council.
 - The application Ref is 24/1554/VOC.
 - The application sought planning permission for "Retention of a single storey outbuilding" without complying with condition 3 attached to planning permission Ref 24/1126/HSE, dated 8 November 2024.
 - The condition in dispute is No3 which states that: "The outbuilding hereby permitted shall not be occupied at any time other than for purposes incidental to the residential use of the dwelling known as 59 Cowley Hill and shall not be independently occupied".
 - The reason given for the condition is: "To ensure that the outbuilding is not severed from the main dwelling to provide a self-contained dwelling unit, since this would be out of character with the area and contrary to the provisions of the Council's adopted Residential Development and Car Parking Standards. To comply with Policies SADM3, SADM30 and SADM40 of the Site Allocations and Development Management Policies Plan, 2016, and Policies CS22 and CS25 of the Hertsmere Core Strategy, 2013".
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Decision

1. The appeal is allowed and planning permission is granted for retention of a single storey outbuilding at 59 Cowley Hill, Borehamwood, Hertfordshire, WD6 5LQ in accordance with the application Ref 24/1554/VOC, without compliance with condition numbers 1, 2 and 3 previously imposed on planning permission Ref 24/1126/HSE dated 8 November 2024 and subject to the following condition:
 - 1) The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 59 Cowley Hill, Borehamwood, WD6 5LQ.

Procedural matters

2. Although the application was made not to comply with Condition 3, as set out above, both the appellant and the Council in their evidence (justification for variation/removal and delegated report respectively) considered Condition 1 which relates to the requirement to remove a kitchen, shower, toilet and basin from the outbuilding within three months of the grant of permission. The reason for this condition is the same as the reason for Condition 3. The confusion appears to have arisen due to the condition relating to the removal of the kitchen etc. being No 3 on the Council's original delegated report.

3. Clarification was sought from both parties as to which condition was in dispute. The appellant confirmed that the removal of Condition 1 (relating to the removal of the kitchen etc.) was sought. The Council agreed that there was some confusion over the condition numbering but on the grounds that the decision notice referred to Condition 3 and in any case the conditions were not mutually exclusive, the appeal should proceed against Condition 3.
4. It is clear that the appellant seeks to retain the kitchen, shower, toilet and basin but, as the Council points out, if this was allowed then Conditions 2 (approved plans) and 3 would also be impacted. Since it is open to me to vary or delete any conditions that require modification as a result of any changes to the condition in dispute, I am satisfied that the interests of neither party would be prejudiced if I consider the appeal on the basis of the description of development set out above, but in the light of all the evidence submitted.

Main Issues

5. There are two main issues. Firstly, whether the retention of the outbuilding as constructed would amount to it being a self-contained dwelling unit that was not ancillary to the main dwelling; and secondly, the effect on the living conditions of occupiers of the dwelling and outbuilding with respect to privacy if Condition 3 was removed.

Reasons

6. The appeal site comprises a large, single storey outbuilding in the rear garden of 59 Cowley Hill, a semi-detached house in a row of similar dwellings. The host dwelling has a gravelled frontage used for vehicle parking and a gated side pedestrian entrance to the rear garden. The outbuilding is located at the end of the garden, facing the dwelling and some 16m from it with clear intervisibility between the two. I saw at my site visit that the outbuilding has an open area which appeared to be used as a cinema room and home office. It also has a shower room with toilet and basin and a small kitchenette.
7. The Council alleges that the outbuilding, as constructed with shower/toilet and kitchenette, results in a self-contained unit of accommodation that is not ancillary to the main dwelling.
8. However, the description of development is “retention of a single storey outbuilding” and the householder application form was submitted. This was accepted by the Council. Moreover, none of the evidence points towards a use as a separate dwelling unit. On the contrary, the submitted plans denote a home office/garden room, and the written evidence further suggests use as a gym and for occasional use to accommodate visiting family.
9. The Courts, and in particular *Uttlesford DC v SSE & White [1992]*, have held that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree.
10. It is clear from my site visit that the outbuilding could only be accessed via 59 Cowley Hill and its curtilage and clearly lies within that residential curtilage, it is modest in size, the distance between it and the main dwelling is limited and the amenity space between would be shared. The evidence also sets out that power

and water supplies for the outbuilding are via the main dwelling and included in utility bills for the dwelling. In this context and taking account of the ancillary uses proposed, the provision of toilet, showering and basic food preparation facilities are reasonable, not excessive and would not in themselves result in the building becoming a separate dwelling unit.

11. Nevertheless, the Council considers that since the shower/toilet and kitchenette would provide all the facilities needed for the building to function as a separate dwelling unit, its use as ancillary accommodation to the main dwelling could not be enforced. I disagree. A standard condition, as suggested by the Council, could be used to secure the ancillary residential nature of the outbuilding. The Council suggests that such a condition would be difficult to monitor or enforce. However, a material change or intensification in the use of the building would be likely to be readily apparent and is thus capable of being enforced against. Further, any future occupation of the building as an independent dwelling would require planning permission.
12. The Council refers to guidance set out in its Planning and Design Guide, Part E: Guidelines for Residential Extensions and Alterations (SPD), 2006, relating to granny annexes and staff accommodation and states that no information has been provided to advise who lives in the "Granny Annexe". However, neither the original application ref. 24/1126/HSE nor the current appeal were in respect of a granny annexe and there was no evidence at the time of my site visit that anyone resides in the outbuilding. Reference is also made to the Town and Country Planning (General Permitted Development) Order (GPDO), 2015, Schedule 2 Part 1 Class E that allows the construction of curtilage buildings for purposes incidental to the enjoyment of the dwelling. However, this is not relevant because the building is the subject of a full planning permission.
13. Overall, there is no credible evidence to suggest that a separate dwelling unit has been created. On the contrary, a clear functional link between the host dwelling and the outbuilding is demonstrated. I am therefore satisfied that the outbuilding is an ancillary residential building, regardless of whether it has a shower/toilet and kitchenette. Moreover, an enforceable planning condition could secure its ancillary use.
14. It is concluded on the first main issue that the retention of the outbuilding as constructed, with a shower/toilet and kitchenette, would not amount to it being a self-contained dwelling unit and it would remain ancillary to the main dwelling. In consequence there would be no conflict with Policy CS22 of the Hertsmere Core Strategy (CS), 2013, Policy SADM30 of the Site Allocations and Development Management Policies Plan (DPD), 2016, or with the National Planning Policy Framework (NPPF), 2024. Taken together and amongst other things these expect new development to be of a high quality , visually attractive and to complement the character of the area.
15. Turning to the second main issue, since I have found that the proposed outbuilding would remain ancillary to the host dwelling, notwithstanding the retention of the shower/toilet and kitchenette, its proximity to the host dwelling would not result in a loss of privacy since it would be used in conjunction with the main dwelling. It is therefore concluded that there would be no harm to the living conditions of occupiers of either building with respect to privacy. In consequence, there would be no conflict with CS Policy CS22, DPD Policy SADM30 or with the

NPPF. Taken together and amongst other things these expect new development to be of a high quality and in particular have a limited impact on the amenity of occupiers of the site and neighbours with respect to privacy.

16. With respect to conditions, firstly, Condition 3 currently refers to purposes *incidental* to the use of the dwelling. However, this is the wording used in the GPDO in the case of buildings constructed under permitted development rights. In planning terms, it is generally held to be more restrictive than the word *ancillary* which is more often used in the case of outbuildings granted full planning permission and is more appropriate in this case since it allows primary living accommodation, including a shower room and kitchen. I shall therefore delete Condition 3 and substitute a new re-worded condition.
17. Since I have found that it is acceptable for the shower/toilet and kitchenette to remain, I shall delete Condition 1 which requires their removal since this is no longer necessary or reasonable. Finally, the development has been completed and so a separate condition requiring it to be carried out in accordance with the approved plans is no longer necessary. I shall therefore delete Condition 2.
18. For the avoidance of doubt, I shall allow the appeal having regard to the version of plan ref. 24/V1/101 submitted with the application and appeal which shows the shower/toilet room and kitchenette in situ.
19. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

KE Down
INSPECTOR