Appeal Decision

Site visit made on 9 October 2018

by A Parkin  BA (Hons) DipTP MRTPI
an Inspector appointed by the Secretary of State

Decision date: 9 January 2019

Appeal Ref: APP/Z5060/W/18/3199611
The Annex, 4 Marks Gate Cottages, Whalebone Lane North, Chadwell Heath RM6 5QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 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 Shyam Lakhani against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 17/01321/FUL, dated 1 August 2017, was refused by notice dated 13 November 2017.
- The application sought planning permission for the change of use of existing outbuilding to form a self-contained granny annex without complying with a condition attached to planning permission Ref 05/01070, dated 16 December 2005.
- The condition in dispute is No 3 which states that: The permitted extension shall only be occupied by a person dependent on the occupiers of the main dwelling by reason of physical or mental disability or frailty caused by age, and at no time shall the development provide a separate and unrelated unit of accommodation.
- The reason given for the condition is: The development does not satisfy the standards considered acceptable by the local planning authority for a separate unit of accommodation and in accordance with Policy H.13 of the Unitary Development Plan.

Decision

1. The appeal is allowed and planning permission is granted for change of use of existing outbuilding to form a self-contained granny annex at The Annex, 4 Marks Gate Cottages, Whalebone Lane North, Chadwell Heath RM6 5QT in accordance with the terms of the application, Ref 17/01321/FUL, dated 1 August 2017, without compliance with conditions 1, 2 and 3 previously imposed on planning permission Ref 05/01070 dated 16 December 2005, and subject to the following condition:

   1) The annex hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 4 Marks Gate Cottages.

Preliminary Matters

2. The Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. The appellant was notified of the publication and invited to make comments, and the Council were notified of this action. No representations were received in relation to this matter within the specified timescales.

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3. The address given on the application form is incorrect. The appeal relates to the annex building within the grounds of No 4 Marks Gate Cottages. I have therefore amended the banner heading accordingly.

4. The proposed development is described as an application for the removal of a condition. However, there are different descriptions of the proposed development within the submitted evidence. The appellant refers to ‘the principle of sub division of the site into two separate units of accommodation’ in paragraph 1.1 of their Grounds for Appeal statement. The Council also refers to the subdivision of the plot into two separate dwellings in their description of the proposal in their officer report, and the conditions suggested by the Council also indicate that they see this proposal as more than the removal of a single condition.

5. The appellant also submitted plans as part of their planning application and as part of the appeal, which are different to those upon which the original planning permission was granted. No building, engineering or other operations are required by the removal of Condition 3 of the original planning permission. These plans do not, therefore, concern the appeal development and I have not had regard to them in determining this appeal.

6. In light of the above, I asked both main parties to provide their comments regarding what is sought in this case, and the basis on which the Council considered the appeal application. In particular, would the annex remain ancillary to the main building, or was an independent dwelling / sub-division proposed?

7. In response, the appellant has stated that ‘the building would remain as a self-contained granny annexe, as it has been described in the existing planning permission, and not to be an independent/sub-divided unit.’

8. However, the Council has stated that ‘...by removing Condition 3, it will not be possible to control who lives in the annex. The application was therefore considered to result in the creation of a new planning unit and therefore planning considerations including impact on the Green Belt, and matters of access and amenity were considered relevant in the assessment of the application.’

9. Condition 3 has two parts. The first part restricts who may live in the annex to someone who is dependent upon the occupiers of the main building by reason of disability, or frailty due to age. The term ‘granny annexe’ in the description of development is therefore somewhat inaccurate, in this respect. The second part of the condition stipulates that the annex should not be used as a separate and unrelated unit of accommodation.

10. The appellant has stated that the proposed development does not seek to create a separate planning unit at the appeal site. I am therefore satisfied that the proposal is seeking to remove the specified restrictions for who may occupy the annex, whilst maintaining the ancillary relationship between the annex and the main building.

11. I have therefore determined this appeal on the basis of what was applied for, the removal of Condition 3 attached to the original planning permission, as refined by the appellant’s subsequent statement referred to above.
Main Issue

12. Therefore, the main issue is the effect the removal of Condition 3 of the original planning permission would have on the living conditions of future occupants of the annex.

Reasons

13. The reason given for Condition 3 is that the annex ‘does not satisfy the standards considered acceptable...for a separate unit of accommodation.’ The appellant has stated that they are not seeking to create a separate unit of accommodation, a matter that can be controlled by a condition.

14. The reason for the condition does not address why the annex should be occupied by a person dependent on the occupiers of the main dwelling by reason of physical or mental disability or frailty caused by age. There would be no change in the ancillary relationship between the annex and the main building or in the living conditions of the future occupants of the annex, from what is currently approved. As a result Condition 3 is not reasonable in this regard and as a consequence would not meet the National Planning Policy Framework (the Framework) tests for conditions.¹

15. There is no dispute between the parties over the internal floorspace standards for the annex. Given the ancillary relationship between the annex and the main building is unchanged, there is also no dispute between the parties over external amenity space, access or parking spaces.

16. For the reasons set out above, the removal of Condition 3 from the original planning permission would not affect the living conditions of future occupants of the annex. It would therefore accord with Policy BP5 (external amenity space) of the Borough Wide Development Policies Development Plan Document 2011, with Policy 3.5 (quality and design of housing) of the London Plan 2016² and with the Framework in this regard.

Other Matters

17. The Council state that removing the restrictions over who may occupy the annex would create a separate planning unit. However, no substantive evidence has been provided to support this position, and in my view it would not be the case. A different type of occupier to those listed in Condition 3 need not affect the ancillary relationship between the annex and the main building.

18. The Council refused planning permission for the removal of Condition 3 on the basis that the proposed development would create a separate planning unit at the appeal site. As a result they considered the submitted plans and other planning issues, including the impact of the proposed development on the Green Belt and matters of access and amenity, in reaching their decision. As set out above, I have determined this appeal on a different basis, and consequently these issues do not need to be addressed in my decision. I have also not had regard to the Council’s suggested conditions should the appeal be allowed, because they do not concern the appeal development.

¹ Paragraph 55
Conditions and Conclusion

19. The appeal building exists and planning permission was granted for its use as an annex in December 2005. As a result the standard time commencement condition and a condition restricting certain permitted development rights are not necessary. A condition to ensure that the appeal building operates as an annex ancillary to the main building, rather than as a separate planning unit, is necessary for reasons of certainty and to protect the living conditions of future occupants.

20. I conclude therefore that the appeal should be allowed.

Andrew Parkin
INSPECTOR

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3 Reference is made to Classes A-D of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) on the Council’s Decision Notice.

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