



Appeal Decision

Site visit made on 19 February 2019

by Rajeevan Satheesan BSc PGCert MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st March 2019

Appeal Ref: APP/B1930/W/18/3217177

1 Cunningham Hill Road, St. Albans AL1 5BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John-Paul Wilkins against the decision of St Albans City & District Council.
 - The application Ref 5/18/2133, dated 2 August 2018, was refused by notice dated 26 October 2018.
 - The development proposed is the erection of an ancillary annexe.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Whilst neither party has drawn my attention to it, I am aware that a previous Inspector dismissed an appeal for the erection of an ancillary annex (Reference: APP/B1930/W/18/3207785). I have taken this into account in the determination of this appeal in so far as it is relevant to my consideration.

Main Issues

3. The main issues are (i) whether the proposal would constitute a separate unit of residential accommodation, rather than an ancillary use; and (ii) if so, the effect of the proposed development on the living conditions for future occupiers of the unit with regard to light and outlook.

Reasons

Use of the Accommodation

4. Both parties have referred to case law with regards to whether the annex would constitute a separate unit. Whilst I have considered all these references, only a number of these are directly comparable to the appeal before me, which I refer to below. In one notable High Court judgement¹ the judge considered 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. In that case the accommodation gave the occupier the facilities of a self-contained unit although it was intended to function as an annex with the occupier sharing her

¹ Uttlesford DC v SSE & White [1992]

living activity in company with the family in the main dwelling. Based on this connection with the main dwelling, there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.

5. With regards to the definition of a separate dwellinghouse in another High Court judgement² the judge considered that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.
6. The appeal building would replace the existing single storey garage and would be located at the far end of the rear garden from the main house and would contain all the facilities required for it to be used as an independent dwelling which include a kitchen and living area, a separate bedroom and a shower room. Whilst the plans show that the existing vehicular access nearest the development would be blocked up, due to the location of this corner plot it would be possible to access the development independently from the existing side access along Cunningham Hill Road. Consequently, there would be no requirement to rely on the existing dwellinghouse at 1 Cunningham Hill Road for any such facilities. This leads me to conclude that the annex would be capable of being used as an independent unit, notwithstanding the appellants' current intentions.
7. The imposition of a condition to limit the use of the annex to purposes ancillary to the occupation of the main dwelling would not control the ownership or the sharing of services. It would be difficult to monitor or enforce such a condition, and due to the siting of the annex and the extent of facilities it would provide, there would be a strong temptation to let the annex accommodation for separate occupation following its initial occupation by a direct relative.
8. A unilateral undertaking (UU) has been provided with the appeal documents in which the appellants covenant not to occupy the site and / or the dwellinghouse save as a single residential unit, and that no part of the site or the dwellinghouse would be occupied as a separate dwelling unit, flat, maisonette, bedsit or similar arrangement from the remainder of the site and dwellinghouse.
9. The UU must be considered against the three tests set out in paragraph 56 of the National Planning Policy Framework (the Framework). While the UU would ensure that the building would not be occupied independently from the main residence, it would not ensure that the occupants would share the services of the main dwelling. This is particularly so given that the annex would contain facilities for independent living, and due to its distance from the main house itself it would be impractical in the encouragement of communal living and sharing of facilities. Moreover, the UU would be difficult to enforce and monitor. As a result, I am not satisfied that the UU meets the tests in the Framework as it would not make the development acceptable in planning terms.
10. In view of my findings, I conclude that the annex would be likely to be or become an independent dwelling, due to the facilities contained within the unit, the distance from the main house and the direct access from Cunningham Hill Road and that this could not be satisfactorily controlled by a condition. This would not comply with Policy 12 of the St Albans District Council Local Plan

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

Review, 1994 (LPR) and the design policies of the Framework. Together these policies seek a high standard of design and that accommodation for relatives, staff or dependents is in the form of an extension to the main dwelling with primary pedestrian access through the main dwelling.

Living conditions for future occupiers with regard to light and outlook

11. Based on the above, it is important to consider the living conditions for future occupiers of the building. With regards to levels of light and outlook afforded to future occupiers the plans illustrate that the bedroom would be served by one thin high-level window and one small square shaped window. Both windows would be within close proximity of the neighbouring boundary treatments and the existing garage of the neighbouring property on Cunningham Hill Road. This would result in poor light and outlook for future occupiers, and a sense of enclosure that would feel oppressive for future occupiers of the bedroom.
12. Consequently, the proposal would result in a claustrophobic environment to the detriment of the living conditions for future occupiers, which would not a pleasant environment for occupiers to relax, contrary to LPR Policies 69 and 70, which are consistent with the design policies and paragraph 127 of the Framework. Collectively these policies require a high standard of design taking into account the scale, character and setting of the surroundings and ensure high standards of amenity are created for future as well as existing users.

Other Matters

13. The appellant considers that there would be an economic benefit to the area in terms of employment during the construction period and household spending in the area, social benefit from providing a range of homes which meets the needs of current and future generations and enabling people to stay out of care for longer, and environmental benefits from reducing the need for travel by private vehicle trips and making efficient use of land whilst freeing up housing. However, I am not convinced that these benefits outweigh the harm identified above under the main issues.
14. The appellant also refers to the High Court decision in *R (Patel) v Secretary of State for Communities and Local Government* [2016] EWHC 3354 (Admin). However, I do not consider that this case is directly comparable to the appeal before me since that case related to a prior approval application for the change of use of retail accommodation to a residential use.
15. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. Whilst I acknowledge that the appellant states that the proposed annex is for elderly relatives to move into, there is no evidence to demonstrate that the current proposal would be the only means by which their needs may be reasonably met. In my view there would be other options of a less harmful nature available should the appellant wish to explore such.

Conclusion

16. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Rajeevan Satheesan

INSPECTOR