

LONDON BOROUGH OF ENFIELD

PLANNING COMMITTEE

Date : 25th September 2012

Report of
Assistant Director, Planning &
Environmental Protection

Contact Officer:
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Ward: Bowes

Application Number : TP/11/1614

Category: Householder
Developments

LOCATION: 112, UPSDELL AVENUE, LONDON, N13 6JL

PROPOSAL: Use of detached building at rear as ancillary accommodation to the existing dwelling (RETROSPECTIVE).

Applicant Name & Address:

George Massos
112, Upsdell Avenue,
London,
N13 6JL

Agent Name & Address:

David Cooper
23, Willow Road
Enfield
EN1 3NG

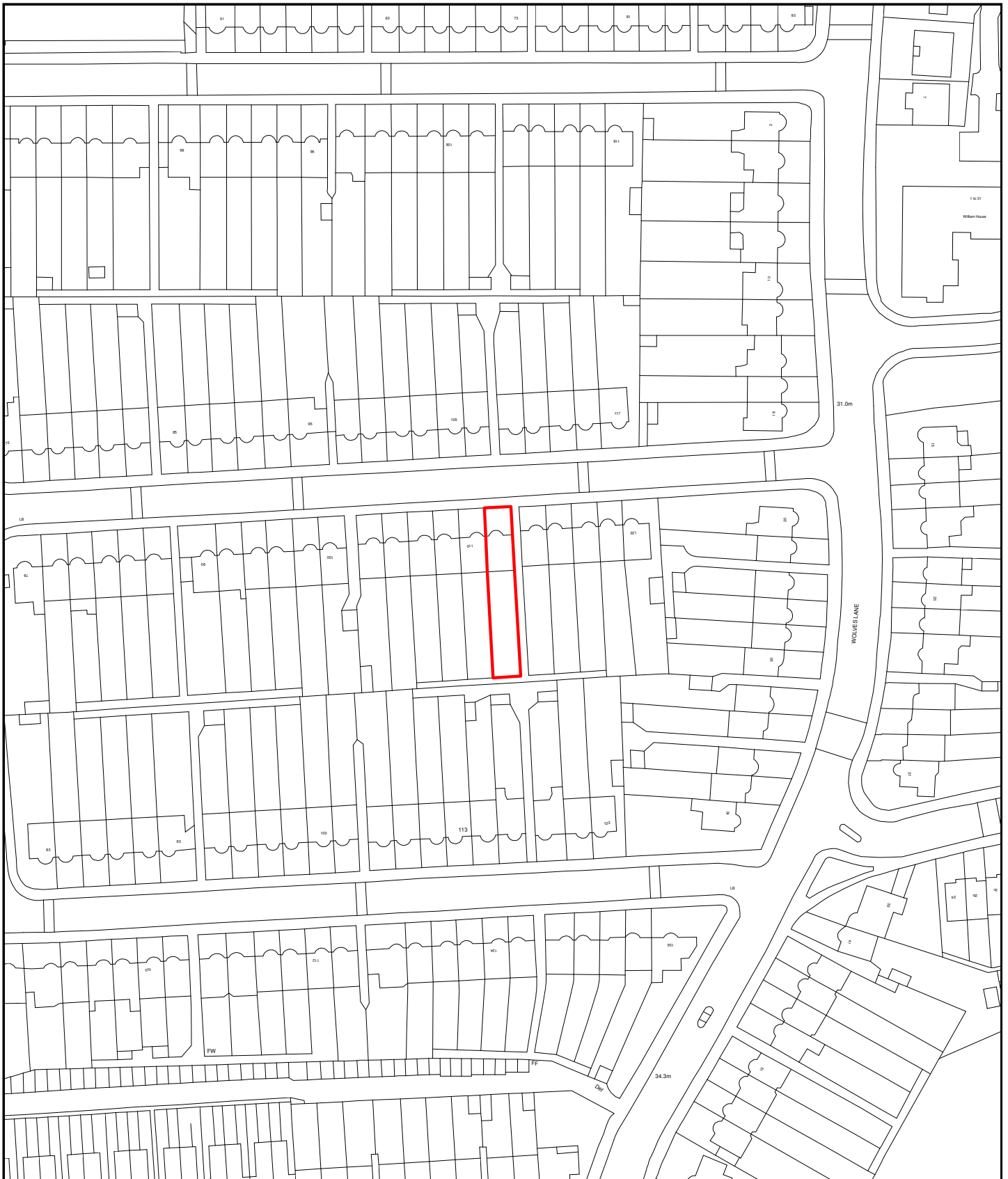
RECOMMENDATION:

That planning permission be **GRANTED** subject to conditions.

Note for Members

Although an application of this nature would normally be determined under delegated authority, because of the local interest and associated enforcement investigation, Councillor Georgiou has requested that the application is reported to the Planning Committee for determination.

At the meeting on 29th May, it was agreed to defer determination of the planning application to enable officers to incorporate further guidance on the legal position relative to the use of outbuilding s as ancillary accommodation.



Development Control



Scale - 1:1250
Time of plot: 11:31

Date of plot: 13/09/2012

1. Site and Surroundings

- 1.1 A two storey end of terrace dwelling with a single storey rear extension, which is located along the southern side of Upsdell Avenue.
- 1.2 The property has a 25 metre deep rear garden with an existing single storey detached outbuilding situated to the north end. The two adjoining properties No. 110 and 114, Upsdell Avenue are single family dwelling houses with rear gardens the same depth as No. 112. A 2 metre wide access runs along the east and south boundary giving rear access to properties 106-118 (even), Upsdell Avenue.
- 1.3 The surrounding area is residential in character

2. Proposal

- 2.1 Planning permission is sought for the use of the existing detached outbuilding as ancillary accommodation to the existing dwelling.
- 2.2 It should be noted that the size and siting of the existing outbuilding is established and its acceptability does not form part of the assessment of this application: the only issue to consider is the use of the outbuilding.

3. Relevant Planning Decisions

- 3.1 CON/6229 – Use of outbuilding as self contained separate unit of accommodation

4. Consultations

4.1 Statutory and non-statutory consultees

- 4.1.1 None

4.2 Public

Consultation letters were sent out to three surrounding occupiers. In addition a site notice was also displayed. One letter of objection was received raising the following points:-

- Tenant living in the outbuilding, which has own address 112a, Upsdell Avenue.

- 4.3 In addition, Councillor Georgiou has also raised the following points:

- enforcement action was previously taken against the outbuilding being used for residential accommodation
- this current application again seeks the use for accommodation which would negate the enforcement action taken.
- Application for a backyard development not in keeping with character of surrounding area.

5. Relevant Policy

5.1 Local Plan – Core Strategy

Policy CP30 Maintaining and improving the quality of the built and open environment

5.2 Saved UDP Policies

(II)GD3 Character and Design
(II)GD6 Traffic Generation
(II)H8 Privacy

5.3 The London Plan

Policy 6.13 Parking
Policy 7.4 Local Character

5.4 Other Relevant Policy

National Planning Policy Framework

6. Analysis

6.1.1 There is no objection to the existing outbuilding which was built more than 4 years ago and is now lawful. The key consideration for the determination of this planning application is the proposed use of the outbuilding and its impact on the character of the area and the residential amenities of neighbouring properties. What is not being considered are the merits of the use of the property as a separate unit of accommodation which has previously been held to be unacceptable

6.1.2 Background

6.2.1 There is considerable case law on the use of outbuildings for residential accommodation. Section 55(2)(d) of the Town and Country Planning Act 1990 states that the use of buildings within the curtilage of dwelling houses is not development if used for any purpose "incidental to the enjoyment" of that dwelling house. In support of this, case law is well established and very clear that the conversion and / or change of use of outbuildings to provide ancillary or additional residential accommodation to an existing main resident is considered incidental to the enjoyment of the main dwelling house. It is only whether the accommodation created constitutes a self contained and separate planning unit that development will have occurred that requires planning permission.

6.2.2 It is acknowledged that the outbuilding was occupied as a separate and self contained form of accommodation representing a breach of planning control: this is the subject of enforcement action which required the owner to:

- a) Permanently cease the use of the detached outbuilding as a separate self contained unit of accommodation.
- b) Permanently remove the kitchen area and all cooking facilities from the detached outbuilding.

- c) Permanently remove the bathroom facilities from the detached outbuilding.
 - d) Permanently remove all resulting materials from the Premises.
- 6.2.3 A recent site visit has revealed that outbuilding is split into 4 rooms and that all cooking facilities have been removed along with bathroom facilities although a toilet and sink still remain. However, the potential for use as a self contained and separate unit of accommodation remains as the outbuilding has the potential benefit of side access through a gate in the fence from the garden to the side passageway: there is no direct access from the outbuilding to the passageway. Hence the submission of this application to regularise the long term position and enable the use of the outbuilding to be effectively controlled.
- 6.2.4 The main contention in terms of establishing whether any such development constitutes “incident to the enjoyment” is around occupation and whether the occupation would have the effect of creating a separate and self contained residential unit.
- 6.2.5 Normally, occupation by family members where the residential accommodation does not provide a full range of facilities commensurate with a self contained dwelling and thus relies on the main residential dwelling is held to be incidental: planning permission would not be required in this instance.
- 6.2.6 Nevertheless a judgement in *Uttlesford DC v SSE & RJ White (1992)* found that it is not necessary for a relative of the occupier of the main dwelling house to rely upon facilities in the main dwelling house in order to maintain additional living accommodation within the same planning unit. It is a matter of fact and degree as to whether a separate and self contained planning unit has been created as established in case in *Epping* in 2001.
- 6.2.7 It is unclear in this case whether the proposed occupation by family members and friends would involve the creation of a separate unit but the aforementioned case law is important to note as this position of “permitted development” does represent a fall back position and would be material in when assessing the impact arising from any refusal of planning permission. It is suggested however that the proposed conditions would provide control and an enforceable position to safeguard the character and amenities of the area
- 6.2.8 Grounds to consider a refusal of the current application having regard to a review of cases previously considered would be limited and must be viewed in relation to the effects of the fallback position which effectively establishes an acceptable base position. Potential areas are set out below together with appropriate comments:
- a) the creation of a self contained unit of accommodation being out of keeping and character with the surrounding area
= with the removal of the kitchen and bathroom facilities and the condition recommended, it is considered the use of the outbuilding would not represent a self contained unit of accommodation.
 - b) any visual impact
- the external appearance is not dissimilar to any other outbuilding and thus, it is considered acceptable.

- c) any increased noise and disturbance affecting residential amenity
- given the fact that an outbuilding can be used for a variety of uses incidental to the occupation of the dwelling house, the effect of noise and disturbance and the impact on residential amenity are rarely supported on appeal
- d) any increase in parking affecting the levels of on street parking.
- the additional occupation could generate a requirement for one parking space and could therefore result in additional pressure on street. Although PTAL levels are low, there is reasonable access to public transport and although parking is heavy, it is not at saturation levels. Unless there was clear evidence of on street parking was causing harm, given the fall back occupation that could occur, together with the approach of the London Plan, it is considered the use would not give rise to conditions prejudicial the free flow and safety of traffic

6.3 Proposed Use of Outbuilding

- 6.3.1 Notwithstanding the breach of planning control that has occurred, it is proposed that the existing outbuilding would be used to provide ancillary accommodation to the existing residential dwelling house rather than a separate or independent unit of accommodation. In so doing, it would contain sleeping accommodation and bathroom facilities to be used on an occasional basis when visiting family members and friends arrive from abroad.
- 6.3.2 It is considered that the use of the existing outbuilding in this manner would address the negative effects on the character of the area and the amenities of neighbouring properties. Moreover, a condition could also be imposed on any permission which would enable the local planning authority to take effect enforcement action against any future breach of planning control.
- 6.3.3 The existing outbuilding is situated at least 13 metres from the rear of the nearest residential property. Although residential use of the outbuilding will generate a small amount of activity, it is considered that this would be much less than occupation as an independent residential unit and thus, would not result in any harm to the amenities of neighbouring occupiers.
- 6.3.4 On this basis, the proposal is considered to be acceptable.

7. **Conclusion**

- 8.1 Having regard to those considerations outlined above, approval of the planning application is recommended in this instance for the following reasons:
 - 1) The use of the existing outbuilding as ancillary accommodation to the existing residential dwelling does not unduly affect the amenities of adjoining or nearby residential properties having regard to Policies (II) GD3 and (II) H8 of the Unitary Development Plan and Local Plan Policy CP30.

9. **Recommendation**

- 9.1 That planning permission be GRANTED subject to the following conditions:

1) C60 – Approved plans

2) The existing outbuilding shall be used solely for purposes incidental to the enjoyment of the dwelling house and shall not be occupied as a separate or self contained unit of residential accommodation or include cooking facilities at any time. Occupation may include use as overnight sleeping accommodation for guests for no more than 4 weeks at any one time and a 3 week period of vacancy must be adhere to during March and October of each year unless otherwise agreed in writing by the local planning authority.,

Reason: To protect the amenities of adjoining and future occupiers, as well as the character of the area.

PLAN ACCOMPANYING ENFORCEMENT NOTICE

Address: 112 UPSDELL AVENUE. N13 6JL

D EVELOPMENT
S ERVICES





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Key

-  The Site (261sq.m.)
-  Outbuilding

File Ref. CON/6229
Scale: 1:500
Date: 12/08/2010
Drg. No. 6100DX