



Appeal Decision

Site visit made on 3 October 2016

by **A U Ghafoor BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 November 2016

Appeal Ref: APP/M5450/X/16/3146803

30 Merton Road, Harrow HA2 0AB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Szymon Malochleb against the decision of the Council of the London Borough of Harrow.
- The application ref P/3433/15, dated 16 July 2015, was refused by notice dated 21 September 2015
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is erection of single-storey outbuilding at the rear of the dwelling.

Decision

1. The appeal is dismissed.

Inspector's reasons

2. No. 30 is a two-storey semi-detached dwelling. The proposed single-storey outbuilding would be located at the bottom of the garden. It would have a flat roof with skylights, bi-folding doors on the front elevation¹, and would be positioned within 2 m of the site's boundaries. It would be 5.5 m deep and its width would vary from 15.3 m to 16 m, because of the appeal plot's shape.
3. For the following reasons, I profoundly disagree with the claim that the proposed outbuilding would constitute permitted development (PD) having regard to Schedule 2, Article 3, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). This permits, amongst other things, development involving provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
4. Paragraph E.1, sub-paragraph (e)(ii), states development is not permitted by Class E if the height of the building would exceed 2.5 m in the case of a building within 2 m of the boundary of the curtilage of the dwellinghouse. Section 2, *interpretation*, sub-paragraph (2) of the GPDO states that unless the context otherwise requires, any reference to the height of a building is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. This understanding is consistent with advice found in the Department's technical guidance².

¹ The front is the elevation facing the dwelling as shown in drawing labelled: *Proposed front elevation*.

² *Permitted development rights for householders - technical guidance*, updated April 2016.

5. To achieve better internal headroom, it seems to me that the outbuilding's floor level would be set approximately 400 - 500 mm below existing ground level. The plans appear to show some kind of excavation and formation of a flat surface below existing ground level. The outbuilding would be accessed via a garden footpath, steps and a raised deck or patio. The 2.5 m limitation in (e)(ii) would be met if the building is measured from the level of the surface adjacent to its two sides and the rear. On the front elevation however its overall height would exceed that limit, because the adjacent ground level would be set lower than the existing garden. In my assessment, the outbuilding's height should not exceed 2.5 m when measured from the level of the surface of the ground immediately adjacent to all four sides. My finding is fatal to the argument that the outbuilding would comply with all of the tolerance set out in Class E to the GPDO.
6. That is not the end of the matter. It is also necessary to examine whether the outbuilding is required for an incidental purpose. In deciding the question as to whether the use can properly be regarded as incidental, factors such as the incidental use, which, in that context, must be a use which occurs together with something else, but nevertheless remains at all times subordinate to it, are relevant matters. The correct approach should have regard to the proposed use and to the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse. The word *required* should be interpreted to mean reasonably required. The words *as such* are also important. The relevant test cannot solely be made by reference to the comparative sizes of the proposed building and the existing dwelling, however, this factor may not be irrelevant. So, it is reasonable to examine the justification as to the proposed building's size in relation to the intended purpose even where the physical tolerances are satisfied.
7. Thus, in my opinion, the appellant should show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse as such. It is therefore appropriate to examine the reasons for development being required. Otherwise, the GPDO would be open to abuse by proposals involving buildings being constructed for one stated purpose and then being used for another purpose.
8. Details about the outbuilding's proposed use are somewhat inconsistent. For example, section 8 in the application form describe the proposal as the *erection of single-storey outbuilding at rear of site* [sic]. The accompanying documents, dated 16 July 2015, at paragraph 2 – project description – say it would be used as *a gym, sauna, WC, office and games room*. The latter is reflected in the appeal papers as well.
9. The submitted floor plans appear to show a home office and gym and there is a sauna and WC. However, between the proposed sauna and WC there seems to be an unidentified room. Additionally, the annotation is unclear as to which part of the outbuilding would be used as a games room. Furthermore drawing no. RHA1406-PR_01 describes the internal layout as *proposed outbuilding* but does not identify the use of the space. This creates significant confusion as to the proposed use of the building. Apart from the vagueness of the claimed intended use, merely making an application for proposed erection of a single-storey outbuilding does not provide a case that what is proposed is, or would be, reasonably required.
10. In addition to all of that, the unchallenged evidence is that the outbuilding would have a footprint of 75.50 square meters. If the semi-transparent canopy is included it would be 109 sqm. This compares to the host dwelling at 61 sqm. I am fully aware of the need to have a good work/life balance and working from home brings various challenges. I understand a separate outbuilding for the proposed use is sought to assist in having a healthy lifestyle. Be that as it may, when evaluating whether the outbuilding is

reasonably required for the enjoyment of the dwellinghouse as such matters such as personal preference are not conclusive factors. The matter does not rest solely on the unrestrained whim of the householder. An unusually large building will not necessarily be reasonably required just because a householder says it is, and it is for the appellant to show that the outbuilding of the proposed size is reasonably required having regard to all the circumstances.

11. I recognise that a separate home office would assist in freeing up one of the rooms at ground floor level in the host building. There is, however, no explanation as to why a large gymnasium is required. For example, there are no specific details of the amount, extent and type of equipment, plant and machinery required to kit out the gymnasium or sauna. There is no explanation as to why a separate toilet facility is required. Added to that there is a lack of detail showing children's play equipment and where it would be located in the outbuilding. There is lack of detailed information to show that the nature and scale of the use for the proposed outbuilding cannot reasonably be accommodated within the existing property, because of a lack of space. It is, therefore, difficult to draw a firm conclusion that the design and size of the outbuilding is reasonably required for the proposed use.
12. As a matter of fact and degree, I find that the outbuilding would be far in excess of what might reasonably be required for the proposed uses. Such an excessively large space cannot be regarded as incidental to the enjoyment of the dwellinghouse as such. On this particular basis, the Council's decision to refuse the LDC was well-founded.

Conclusion

13. For all of the above reasons my findings are as follows.
14. On the evidence now available, the proposed outbuilding would fail to comply with paragraph E.1 to Class E. Even if an alternative view is to prevail on that specific point, the evidence presented does not show, to my satisfaction, that the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse as such. Therefore, the development would not constitute PD.
15. Having considered all other matters, on the balance of probabilities, my inescapable conclusion is that the appeal should fail, because the proposed operations would not be lawful and express planning permission is required.
16. I will exercise accordingly the powers transferred to me in section 195 (3) of the Act as amended.

A U Ghafoor

Inspector