
Appeal Decision

Site visit made on 14 November 2016

by K R Seward Solicitor

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

Decision date: 24 November 2016

Appeal Ref: APP/U5930/X/16/3157631
27 St Peter's Avenue, Walthamstow E17 3PU

- 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 Dr Muhammad Aleem Mirza against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 161917, dated 13 June 2016, was refused by notice dated 10 August 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a medical clinic.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council says the outbuilding is already in use as a day clinic. This is disputed by the appellant who says that only the internal decorations have been changed and fitted out for approval by the Care Quality Commission as one consulting room and treatment room. At my site visit it was apparent that installations, furniture and equipment are in place ready for use as a medical clinic, but there was no sign such use has started. I am satisfied that the application is properly described as a proposed use.
 3. The Council decided the application by reference to the permitted development provisions within Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015. Class E permits (amongst other things) the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. In this instance, the application is not concerned with the provision of a building, but the use of an existing building.
 4. That being the case, the issue in fact is whether the use amounts to development of land for the purposes of section 55 of the 1990 Act. Pursuant to section 55(2) certain operations and uses shall not be taken to involve development of land. These include the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such (section 55(2)(d)). Both parties' arguments actually relate to whether the use of the outbuilding would be
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caught by this provision. Therefore, no prejudice arises from me proceeding to determine the appeal by consideration of section 55(2)(d).

5. In a LDC appeal, the planning merits are not relevant. Therefore, consideration cannot be given to the benefits of the proposed use as advanced by the appellant. My decision must rest on the facts of the case and application of relevant planning law and judicial authority.

Main Issue

6. In light of the above, the main issue is whether at the time of the LDC application the proposed use as a medical clinic would have involved the development of land for the purposes of section 55 of the 1990 Act.

Reasons

7. In any application for a LDC, the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed use would have been lawful at the time of the application.
8. The appeal site is a reasonably large 2 storey end terrace house occupied by the appellant as his residence. The property is on a corner plot on St Peter's Avenue with Woodford New Road. A Certificate of Lawfulness of Proposed Use or Development was issued in 2015 for a single storey outbuilding intended for use as a gym/playroom. The outbuilding is located at the end of the rear garden. It extends an existing garage and the construction is complete. The appellant now wishes to use the outbuilding as a medical centre from which he would provide GP and osteopath services to private patients. The parties agree that such use falls within use Class D1 (non-residential institutions) of the Town and Country Planning (Use Classes) Order 1987. The use of the dwellinghouse is Class C3.
9. As set out above, for planning permission not to be required the outbuilding must be used for a purpose incidental to the enjoyment of the dwellinghouse as such. This exception allows for uses on a scale and nature incidental to the reasonable enjoyment by an occupant of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage.
10. The term 'incidental' refers to a use or activity that would be considered to be ordinarily associated with the primary use of the property. For example, the previous use as gym/playroom would have been ancillary or incidental to the use of the dwellinghouse where used for the benefit of the occupants. The use as a medical clinic would not be a use ordinarily associated with a residential use of a dwelling as is evident from the two uses falling within different use classes. It would involve patients coming to the property to receive healthcare services. Even though the service would be operated by a residential occupant of the dwelling, the use would be providing services to patients as a business activity. The functional link to the primary residential use would be broken.
11. Having found the proposed use not to be incidental to the residential use, I have considered whether it might be argued that the activity would be on such a small scale as to be '*de minimis*'. However, I do not consider that to be the case. The outbuilding is not particularly small comparative to the plot size. It has a consulting room, treatment room, reception and waiting area, toilet, kitchenette and store room. Moreover, the nature of the use would generate people coming and going which would have a noticeable impact on how the

property is used. It is likely to bring about a change in character which as a matter of fact and degree would result in a material change in use of the property requiring planning permission. Indeed, with a separate public access via the main double doors along Woodford New Road there would be both physical and functional separation between the house and outbuilding creating a separate planning unit.

12. As already indicated, my decision makes no comment on the planning merits of the proposal. It remains open to the appellant to submit an application to the Council for planning permission for the proposed use.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed medical clinic was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

KR Seward

INSPECTOR