The Planning Inspectorate

Appeal Decision

Site visit made on 23 November 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 6 January 2017

Appeal Ref: APP/T5150/X/16/3152242
3 Gooseacre Lane, Harrow, HA3 0XZ

- 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 N Vekaria against the decision of the Council of the London Borough of Brent.
- The application Ref 16/0383, dated 29 January 2016, was refused by a notice dated 18 April 2016.
- 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 described on the application form as "*Proposed New Store at rear of property*".

Decision

1. The appeal is dismissed.

Evidence in LDC cases

2. A certificate of lawfulness is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits of the development are not relevant in deciding an application for a certificate or an appeal.

3. The appellant has asserted that the proposal is 'permitted development' by virtue of the provisions of Part 1 Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 [the GPDO]. The burden of proof regarding decisive matters of fact rests on the appellant, so he must adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is 'the balance of probability' (i.e., that it is more probable than not).

Main issue

4. The appeal is confined to reviewing the Council's decision, to establish whether the refusal to grant a certificate was well-founded. The reason for refusal was:

> *The proposed outbuilding in the rear does not meet the requirements for permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as it has not been demonstrated that it is required for a purpose incidental to the enjoyment of the dwellinghouse. Therefore the proposal is not lawful and planning permission is required.*

Background

The appeal site and recent planning history

5. No. 3 Gooseacre Lane is a two-storey semi-detached house which has been significantly altered and extended in recent years. On 4 June 2015, planning permission (Ref. 15/1582) was granted for works that entailed the demolition of an existing garage, shed and single-storey side extension and the erection of a 2-storey side and rear extension, a single-storey rear extension and alterations to the front porch.

6. According to the Council's delegated report on the LDC application (Ref. 16/0383), the footprint of the original dwellinghouse was about 51sqm. According to the annotations on the LDC application plan, the footprint of the enlarged building is about 142.5sqm.

7. On 30 January 2016 an application (Ref. 16/0396) was made for a LDC for an additional 2-storey extension to the development approved under the 4 June 2015 planning permission. On 18 April 2016 the Council refused to grant a certificate.

The proposed development

8. The proposal is to erect a single-storey flat-roofed outbuilding at the rear of the back garden of the appeal property. It would abut the rear and side boundaries of the property. The wall that faces the house would have centrally located double doors with a window on either side of them.

9. The Council's decision notice refers to the 2 plans on which its decision was based. These are drawing Nos. 16/01-01 (Proposals) and 16/01-02 (Location). The 'Proposals' plan shows that the outbuilding would measure 5.6m deep, between 9.417 and 10.065m wide and have a height of 2.475m. It would occupy an area of 54.55sqm and contain a single room, which is identified as a '*Store'*.

Alternative proposals

10. Since the application was made, 2 alternative proposals have been drawn up and submitted. These proposals are shown on drawing Nos. 16/01-01 Rev A (dated 3.4.16) and 16/01-01 Rev B (dated 30.5.16).

11. Revision A shows that the outbuilding would have a single room, notionally divided into 2 unequal spaces (a dotted line is shown running the width of the building from a point just to the north of the entrance door; the left side of the outbuilding when viewed from the house). The smaller space (to the north of the dotted line) is marked '*Storage Area'.* The larger space is marked '*Gymnasium Area*'. Within this area there are the outlines of 4 pieces of fitness equipment, annotated as '*Cross Trainer'*, '*Rowing Machine*', '*Cycling Machine*' and '*Treadmill Machine'*.

12. Revision B shows that the outbuilding would be subdivided into 2 rooms. About half of the smaller space is shown as a room marked '*Store'*. The other half is marked '*Aerobic and Yoga Area*'. The larger space, the '*Gymnasium Area*', is unchanged, with the same 4 pieces of fitness equipment in the same positions as shown on Revision A.

Reasons

Class E - determining "a purpose incidental to the enjoyment of the dwellinghouse as such"

13. Subject to the provisos at E.1, Part 1, Class E of Schedule 2 of the GPDO states that: "*The provision within the curtilage of the dwellinghouse of – (a) any building or enclosure……required for a purpose incidental to the enjoyment of the dwellinghouse as such*" is permitted development. Class E does not permit the erection of outbuildings for use as additional residential accommodation of the sort which would normally be found in a house, such as an additional bedroom or living room.

14. The Courts[1] have held that the test to be applied in cases such as this is whether the uses of the proposed building, when considered in the context of the 'planning unit', are intended to be, and will remain, ancillary or subordinate to the main use of the property as a dwellinghouse. It is correct to consider the nature and scale of that use in the context of whether it is required for a purpose incidental to the enjoyment of the dwellinghouse.

15. The word 'required' should be taken to mean '*reasonably required'*. It is therefore for the appellant to show that what is proposed - the floorspace attributed to each proposed use - is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.

16. Because of the possibility that permitted development rights might be abused by sham proposals involving buildings being constructed for one stated purpose and then being used for a different purpose, it is necessary to scrutinise the reasons that have been put forward for development being "*required*" under Class E.

17. Although size is just one factor that might have some relevance in determining whether the building would be '*incidental'* for the purposes of Class E, a critical examination is particularly required where a proposed outbuilding is large and where the original house has already been substantially altered and enlarged.

The appellant's position

18. The application form simply describes the proposed outbuilding as a new store. However, in the grounds of appeal, the appellant's agent states that his client wishes to provide an independent space from the house to accommodate leisure activities and a storage area. He acknowledges that the application was not specific as to the use of the outbuilding, but says that the applicant felt aggrieved that the Council was not proactive enough or considerate enough to make further enquiries as to its proposed use before determining the application.

19. In his submission, a distant relative of the appellant had sought and obtained a certificate of lawfulness for the proposed erection of an outbuilding in the rear garden of the dwellinghouse at No. 8 Holt Road, Wembley. The inference is that the two proposals were similar and that the Council should have treated both in the same way.

The Council's position

20. The Council acknowledges that the proposed building would not breach any of the limitations of Class E.1, E.2 or E.3. However, Class E only permits a building required for a purpose incidental to the enjoyment of the dwellinghouse. For a certificate of lawfulness to be issued, the burden of proof is on the appellant to show, on the balance of probability, that this building is reasonably required for such a purpose.

21. The appellant has claimed that it would be used as a store, but he has failed to show that an outbuilding of this size, which would have a larger footprint than that of the original dwellinghouse, would be reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse.

[1] See *Emin v Secretary of State for the Environment and Mid Sussex DC* [1989] JPL 909, and *Holding v First Secretary of State* [2004] JPL 1405. In *Emin*, the Court held that, in order to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. It is therefore necessary to ensure that they are incidental or conducive to the very condition of living in the dwellinghouse. In that connection the scale of those activities is obviously an important matter, because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such. In that context the physical size of the buildings could be a relevant consideration, in that they might represent some index of the nature and scale of the activities. The use of a building cannot rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. The word "incidental" connotes an element of subordination, in land use terms, in relation to the enjoyment of the dwellinghouse itself.

My assessment and conclusions

22. In the context of the original house and the additional development that has taken place on the land, the proposed outbuilding would be large. To give some sense of perspective, a building of 54.55sqm would meet the minimum gross internal floor area space standards that are set out in *The London Plan* (March 2016) and the *Nationally Described Space Standards* (2015) for a new, single-storey 1 bedroom/1 person flat (39sqm), or a 1 bedroom/2 person flat (50sqm).

23. There is no explanation of a need for an outbuilding of this size for use as a store. No information has been provided about the occupants of No. 3 Gooseacre Lane or their storage needs. I appreciate that each occupant will have a need to store their possessions somewhere but most houses, when built, incorporate some domestic storage space to cater for these needs. The original dwellinghouse has been significantly enlarged as a result of recent extensions. No reason has been given as to why the family's storage needs could not be met from within the enlarged dwelling.

24. Since the LDC application was made, the appellant has submitted further plans for alternative uses of the proposed outbuilding. These plans show a much smaller space within the building being allocated for storage. This indicates that the family's need for additional storage space might not be as great as inferred when the application was made.

25. The alternative plans indicate that the main purpose of the proposed outbuilding has changed to that of a gymnasium. However, no information has been provided about the family members who might use the equipment that would be housed within it. The changes in room sizes and labels, and the lack of any clear justification for any of the uses that are proposed on the alternative plans, suggest to me that the appellant has had in mind the intention to construct a large outbuilding in the rear garden of this property but has no clear idea of the purpose that it might serve.

26. The proposal that has been presented is vague and imprecise. Simply making an application for a certificate and indicating a proposed use does not provide a case that what is proposed is, or would be, reasonably required. No evidence has been presented on which to base a finding that the outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at No. 3 Gooseacre Lane. The appellant has failed to demonstrate, on the balance of probability, that the proposed outbuilding would be permitted development under Class E of Part 1 of Schedule 2 of the GPDO.

Conclusions

27. I have taken account of all the matters raised in the written representations, including the case cited by the appellant of an outbuilding elsewhere in the borough where the Council has granted a certificate. I have no information on the circumstances of that case or the evidence that was presented to support it.

28. In the particular circumstances of this case, I conclude that the Council's refusal to grant a certificate was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

George Mapson

INSPECTOR