
Appeal Decision

Site visit made on 27 February 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 13 March 2017

Appeal Ref: APP/A5270/X/16/3162031

2 Hurley Road, Greenford, UB6 9EZ

- 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 Shabeer Ahmed against the decision of the Council of the London Borough of Ealing.
- The application Ref 1662562CPL dated 1 June 2016, was refused by notice dated 4 August 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 a proposed outbuilding with shower/toilet room following demolition of the existing outbuilding.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. At the time of my visit the previous outbuilding had been demolished and it appeared that foundations and a course of blocks had been laid in respect of the proposed new building.
2. The Council described the proposal as 'construction of a single storey outbuilding to be used as a gym/storage space (following demolition of existing outbuilding)' whereas I have taken the description above from the application. I will address this point in my determination of the appeal.

Main Issue

3. The main issue in this appeal is whether the proposed development as shown on the application drawings would have been lawful at the date on which the application was made, that is, on 1 June 2016. In an appeal such as this the planning merits of the proposed development do not fall to be considered and therefore the matters raised by the Appellant which include comparison with other outbuildings in the area are matters that cannot be taken into account.

Reasons

4. S.55 of the 1990 Act describes 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land and, subject to a number of specified exceptions, planning permission is required for the
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carrying out of any development of land¹. One of the specified exceptions is provided for by Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) pursuant to which planning permission is granted for the classes of development described as permitted development in Schedule 2.

5. Class E of Part 1 of Schedule 2 permits 'the provision within the curtilage of a dwellinghouse of (a) any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...' subject to specified limitations. The Council's first reason for refusal is that the floor space of the proposed outbuilding, some 44m sq, would be more than the footprint of the original dwellinghouse, some 42.5m sq, and therefore the proposed outbuilding would not be considered ancillary to the main dwelling as a result of its scale and size.
6. Class E of the GPDO applies to a building that is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. The Technical Guidance² advises that "Class E sets out the rules on permitted development for buildings etc within the area of land surrounding a house ... Buildings should not be attached to the house and should be built for purposes incidental to the enjoyment of the house ... the rules also allow, subject to the conditions and limitations [below], a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a dwellinghouse would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen."
7. Although not so described in the application the drawing³ of the proposed outbuilding describes it as a gym/storage and it would include a shower and a toilet. The Court in *Emin v SSE*⁴ confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration but was not by itself conclusive. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
8. Although the proposed purpose for gym and storage could be reasonably considered as incidental to the enjoyment of the dwelling, the onus of proof is on the Appellant to show that, on the balance of probability, what is proposed is reasonably required for that purpose and he has provided no evidence to that effect. Given the scale of the proposed outbuilding in relation to the original main dwelling and in the absence of any information from the Appellant why such a large outbuilding is required for the stated gym and storage

¹ S.57 of the 1990 Act

² CLG – Permitted development for householders (April 2014). The Guidance refers to the previous GPDO but for the purposes of this appeal there have been no relevant amendments to Class E

³ Drawing No 1 of 2

⁴ *Emin v SSE and Mid Sussex CC* 58 P&CR 416

purposes it seems to me that, on balance, the outbuilding would not constitute permitted development.

9. With regard to the Council's second reason for refusal, I noted on my visit that the back of the outbuilding was built close up to the rear boundary of the property. Therefore, even if I had reached a different conclusion with regard to incidental use, the proposed outbuilding would not be permitted development because it would exceed the permitted tolerance specified in E.1(e)(ii), that is, it would be within 2m of the boundary of the curtilage of the dwelling and, as it would have a pitched roof, it would exceed the height of 2.5m.

Conclusions

10. 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 outbuilding with shower/toilet room following demolition of the existing outbuilding 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.

Decision

11. The appeal is dismissed.

Gloria McFarlane

Inspector