



Appeal Decision

Site visit made on 20 March 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 27 March 2017

Appeal Ref: APP/R5510/X/17/3167037

94 Marvell Avenue, Hayes, Middlesex UB4 0QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 [hereinafter "the Act"] 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 Miss M Grewal against the decision of the Council of the London Borough of Hillingdon.
 - The application [Ref 24383/APP/2016/3969], dated 28 October 2016, was refused by notice dated 29 December 2016.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which an LDC was sought was erection of a residential outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is an LDC that describes the proposed operation which is considered to be lawful. A plan that identifies the land, edged in red, is attached to the LDC.

Procedural matters

2. The Council has amended the description of development on its decision notice to: *"Single storey detached outbuilding to rear for use as a games room/gym/sauna"*. However my view that this revised description was not agreed by the Appellant is confirmed by section E of the appeal form. In the circumstances I decline to deal with the appeal on the basis of the Council's revised description.
3. At the site inspection it was agreed that the rear kitchen extension, which has a footprint of approximately 30 m², was not erected on the date on which the application now subject of this appeal was submitted. It was also noted that the Appellant has erected a detached building at the rear of the appeal site, which I estimate to be approximately 6 m wide, 5 m deep and just over 3 m high with a dual pitched roof. This detached building was waterproof but not substantially completed at the time of my inspection. Although that building is not before me it is relevant to note that it has been erected at the rear of the plot and so takes up part of the footprint of the proposed building.
4. The Planning Practice Guidance ['the Guidance'] makes clear that the applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?
5. An application for an award of costs has been made by Miss M Grewal against the Council of the London Borough of Hillingdon. This application is the subject of a separate decision.

Reasons

6. It is trite to record that it is common ground that the proposed outbuilding complies with all of the criteria in Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 [the GPDO], e.g. in terms of height and distance from boundaries¹. The sole issue in dispute is whether the outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
7. Part 2.d. of the Assessment in the Supporting Statement that accompanied the application explained that the family are avid gym users and intend the leisure room, gym and sauna for their own purposes. It says the submitted drawings show how the building is to be laid out with a Jacuzzi and sauna at the back, a gym area at the front, a small shower room connected to both areas and a pool table, which allows for people playing pool to move around the table. I accept that this is what is shown on drawing No 94MA-16171 002 Rev A.
8. In the appeal statement new information has been provided for the first time. Part 3.n. identifies the equipment to include: a pool table, treadmill, rowing machine, cross trainer, exercise bike, gym weights space area, punch bag, bar area and a sofa, in addition to facilities, such as the sauna and storage area, shown on the proposed floorplan. Perhaps it would have been helpful if this list had been provided earlier. There is a piece of equipment shown on the proposed floorplan but even with the benefit of this list I am not certain it is meant to be a treadmill as there is no annotation on the plan. Amongst other things the proposed bar area is not depicted or annotated on the floorplan. The pool table shown on the floorplan does not appear to be 8 feet long [2.44 m], as now indicated in the appeal statement. The weights area shown on the floorplan is also much less than a "*minimum*" 3 m x 3 m area.
9. Taking account of this information, including the detailed measurements given for the respective pieces of equipment, which was not before the Council when it made its decision, the case for this building's size and scale is much stronger. On the balance of probability I accept these facilities are intended to be used by the family for purposes incidental to the enjoyment of the dwellinghouse as such. Although there is a gate to the rear garden, at the end of the flank wall of the house, I have no reason to think that the facilities would be widely used by others, perhaps with the exception of some close friends of the family. The new kitchen with its large glazed opening faces towards the rear garden and so use of the proposed facility by third parties would give rise to privacy issues.
10. In reaching this view I acknowledge that the proposed outbuilding would have a relatively large area that equates to around 120 % of the footprint of the original dwelling. That estimate has not been challenged and is consistent with what I observed during my site inspection. The new rear kitchen extension is not relevant and whilst there is some evidence that it replaced a rear projection I have insufficient information before me to express a view on whether that floorspace was material on the date that this application was made². In these circumstances the footprint of the original dwelling appears to equate, in this

¹ See analysis in section 4.0 of the Council's Delegated Report.

² The Site Location Plan records the existence of a rear projection, the rear wall of which appears to have been in line with the rear wall of No 92. Based on my measurements of the existing dwellinghouse, without the recent kitchen extension, it would appear that any rear projection was not included in the Council's figure of 45 m². However the Appellant has not shown that the rear projection was in existence on the date that the application was made and in those circumstances I am unable to take it into account.

- particular case, to that which existed on the date the application was made.
11. This magnitude of increase does not lead to the conclusion that this particular scheme would not be incidental. By way of example paragraph 10 of the appeal decision in Gateshead [Ref APP/H4505/X/14/3001056] records the proposed building was 183 % larger than the footprint of the dwellinghouse. In that case an LDC was nevertheless issued having regard to the judgement of Emin³ in which it was held that size may be an important consideration but not by itself conclusive. Although the proposed block plan shows that the outbuilding would take up more than 10 % of the total area of the curtilage, which was the position in the Gateshead appeal, it is common ground that it would be below the 50 % figure, which is set out in criterion (b) in E.1 of Class E of the GPDO.
 12. The Council's Delegated Report quotes extensively from 2 appeal decisions⁴ but no copies are provided and I can only take account of the limited information before me. Moreover the Inspector in paragraph 7 of the Cornwall Road appeal decision [Ref APP/R5510/X/16/3143778] has explained why the rationale in the first of these, at Hitherbroom Road, is not the approach required by the GPDO⁵. The Council need to heed that advice and not rely on that decision in future.
 13. Paragraph 7 of the Cornwall Road appeal decision also distinguishes the second appeal decision relied on by the Council for good reason. Similarly in this case there was no ambiguity in either the description or the proposed floorplan. Any inadequacy in the Assessment in the Supporting Statement that accompanied the application has now been addressed at appeal stage and so, in contrast to the Bourne Avenue appeal, there is a sound explanation of why an outbuilding with a footprint of 54 m² is reasonably required. I have already explained by reference to the Gateshead appeal and the court judgement of Emin why size is not necessarily determinative. Accordingly I too find that the circumstances of these appeal decisions were materially different such that they do not provide a sound basis for withholding an LDC in this case.
 14. All of the facilities are in my view reasonably required. Given the Council might be concerned about whether this is a sham proposal, the proposed bathroom might be said to be the function that duplicates a facility in the main house. However, in the context of both: i) the gym area; and, ii) the Jacuzzi and sauna, this facility is not inappropriate to serve a use of this nature. The mere subdivision of the outbuilding into more than one room is not conclusive given the very different functions of what might be described as the 'wet rooms'. This factor certainly does not lead me to find it: "*...takes the proposal into a different league*". To the contrary it appears to be eminently fit for purpose.
 15. For the reasons given I conclude on the balance of probabilities that the proposed outbuilding was, on the date the LDC application was made, required for a purpose incidental to the enjoyment of the dwellinghouse as such. In the circumstances it would have been permitted development by virtue of Article 3 and Class E of Part 1 to Schedule 2 of the GPDO and, hence, would have been lawful for planning purposes for that reason.

Other matters

16. Based on my site inspection the site description in section 2 of the Delegated

³ *Emin v SSE and Mid-Sussex District Council* [1989] 58 P&CR 416.

⁴ Appeal Refs APP/R5510/X/09/2111737 and APP/R5510/X/09/2110511.

⁵ See paragraphs 4 and 7 of that decision. In particular the former explains why it is the size of what existed on the date that the application was made that is significant rather than the original dwelling house.

Report does appear to be wrong insofar as the property does not have a bay window or, at the time of my inspection, a detached garage⁶. However the Supporting Statement is listed as part of the documentation before the Council when it assessed the application and I have no reason to think it was not taken into account when the Council made its decision. To the contrary the second sentence of section 2 of the Delegated Report⁷ appears to be a clear reference to part 2.d. of the Assessment in the Supporting Statement, quoted previously.

Conclusion

17. For the above reasons, having regard to all other matters raised, including the other appeal decisions to which reference has been made, I conclude, on the evidence now available, that the Council's refusal to grant an LDC for the erection of a residential outbuilding at 94 Marvell Avenue, Hayes, Middlesex UB4 0QT was not well founded. The appeal will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

Pete Drew

INSPECTOR

⁶ I note from the Site Location Plan that it records the existence of outbuildings that were no longer in existence at the time of my visit and so I cannot rule out the possibility that the reference to a detached garage is correct.

⁷ This is repeated at the start of the second paragraph of the substantive Appraisal.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 28 October 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate⁸, would have been lawful within the meaning of section 191 of the Act, for the following reason:

1. The proposed building operations are permitted development by virtue of Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Pete Drew

Inspector

Date: 27 March 2017

Reference: APP/R5510/X/17/3167037

First Schedule

Erection of a residential outbuilding.

Second Schedule

94 Marvell Avenue, Hayes, Middlesex UB4 0QT

⁸ I have used the only plan that has been submitted on which the appeal site is edged red, although I acknowledge that apart from the Site Location Plan, this also includes the Block Plan on which the site is not edged red.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Act.

It certifies that the operation described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.

The effect of the certificate is subject to the provisions in section 192(4) of the Act, which state that the lawfulness of a specified operation is only conclusively presumed where there has been no material change, before the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 March 2017

by **Pete Drew BSc (Hons), Dip TP (Dist) MRTPI**

Land at: 94 Marvell Avenue, Hayes, Middlesex UB4 0QT

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Scale: Do not scale as original plan has been scanned which might cause variations.

