
Appeals Decision

Site visit made on 20 March 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 April 2017

Appeal A: Appeal Ref: APP/T5720/X/17/3166828
20 Cranleigh Road, Merton Park, London, SW19 3LU

- 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 Dilan Senatileke against the decision of the Council of the London Borough of Merton
- The application Ref 16/P4194, dated 27 October 2016, was refused by notice dated 22 December 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 new garden outbuilding at the rear of the garden.

Summary of Decision: The appeal is dismissed.

Appeal B: Appeal Ref: APP/T5720/W/17/3166827
20 Cranleigh Road, Merton, Park, London, SW19 3LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Dilan Senatileke against the decision of the Council of the London Borough of Merton.
- The application Ref 16/P3231, dated 12 August 2016, was refused by notice dated 18 October 2016.
- The development proposed is a garden outbuilding positioned at the end of the existing garden.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Appeals A and B have been linked. Although they raise different issues, and the proposed outbuilding is different in Appeal A from that in Appeal B, there are matters that apply in both appeals and I will take all matters into account in my determination of the separate appeals.
2. Since my visit planning permission has been granted for the erection of a single storey outbuilding at the appeal property¹. I will take this into account in my determination of Appeal B.

¹ Ref:17/P0521 dated 27 March 2017

Appeal A: Main Issue

3. The main issue in this appeal is whether the proposed development as shown on the application drawings² would have been lawful at the date on which the application was made, that is, on 27 October 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.

Appeal A: 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 carrying out of any development of land³. 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 reasons for refusal are that the proposed outbuilding exceeds what may reasonably be considered as incidental to the enjoyment of the dwellinghouse; its floor space would be larger than the ground floor of the original main dwelling; and although the activities designated on the plans fall into categories that individually may be acceptable as incidental to the enjoyment of the dwellinghouse, taken together they occupy an unreasonable amount of space.
6. The Technical Guidance⁴ advises that Class E of the GPDO 'sets out the rules on permitted development for buildings etc within the curtilage of a house. Buildings under Class E should be built for purposes incidental to the enjoyment of the 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 house 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. The proposed outbuilding would comprise a 'bathroom' with a basin and a toilet some 5sqm; a home office space some 35sqm; a gym area some 19sqm; and a play room some 19sqm. It would be 2.5m high, 7.5m wide and 13.3m long. There would be a rear entrance into the office area from the service road at the back of the property as well as doors into the play area from the garden⁵.

² AD9800/AA Rev1, AD/9800/BB Rev 1, AD/9800/21 Rev 1, AD/9800/22 Rev 1, AD/9800/24 Rev 1, AD/9800/25 Rev1, AD/9800/26 Rev 1 and AD/9800/30 Rev 1

³ S.57 of the 1990 Act

⁴ CLG – Permitted development for householders (April 2016)

⁵ From representations made by an interested party there may be issues about access to this proposed entrance and I noted on my visit that the entrance to it on Tybenham Road stated that it was a private road for residents of Tybenham Road only. But this is a matter outside the planning considerations of both of the appeals

8. The proposal would comply with Class E so far as dimensions are concerned, however, the Court in *Emin v SSE*⁶ 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.
9. The proposed outbuilding would have a footprint of some 78sqm which would be greater than the footprint of the current house. The approved extension to the dwelling would provide a footprint of some 130sqm and whilst it appears likely that these works will be carried out there is no certainty that they will. The proposed purposes for the outbuilding are those that could be reasonably considered as incidental to the enjoyment of the dwelling and the Appellant has set out in some detail how the spaces would be used including an office for homeworking by himself and his wife, a gym and play area for his children. I take into account that the outbuilding is extensive in comparison with the scale of the house and that an Inspector has found that a proposed home office in an outbuilding of some 30sqm was excessive⁷. Given the scale of the proposed outbuilding in relation to the original main dwelling and the spaces to be utilised by the proposed uses I consider that, on balance, the outbuilding would not constitute permitted development.

Appeal A: 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 new garden outbuilding at the rear of the garden 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.

Appeal A: Decision

11. The appeal is dismissed.

Appeal B: Main issues

12. From the reasons for refusal I consider that the main issues are the effect of the proposed outbuilding on the character and appearance of the area and its effect on the living conditions of adjoining neighbours with regard visual amenity.

Appeal B: Reasons

13. The appeal property currently comprises a two storey semi-detached house in a residential area of similar houses. It has a back garden of some 37m long and there are permitted development rights and a grant of planning permission which would provide single storey, two storey and roof extensions to the main dwelling⁸.

⁶ *Emin v SSE and Mid Sussex CC* 58 P&CR 416

⁷ APP/R5510/X/10/130342

⁸ Refs: 16/P0821 and 16/P1801

14. The outbuilding proposed would be located at the back of the garden and it would be some 7.5m wide, tapering to 6.8m at the rear boundary; it would be 13.3m long with a flat roof and it would be about 3.10m high. In addition there would be a pergola on the southern elevation some 4.8m deep⁹. The total footprint, including the pergola would be 95sqm¹⁰. The use would be as an office with secondary uses of play area and gym. The submitted plans show one large space save for the bathroom in which no fixtures are marked¹¹. However, the appeal statement repeats the uses and divisions as shown in the LDC appeal (Appeal A).
15. Although the rear garden at No 20, in common with other gardens in the area, is long the building that is proposed would be a substantial structure both in terms of footprint and height and its bulk and mass would be over-dominant in this location. The proposed outbuilding would not have the appearance of a garden outbuilding but, given its size, would be more akin to a second dwelling at the rear; as such it would not be in keeping with the character and appearance of the surrounding area which comprises the back gardens of properties facing Cranleigh Road and Tybenham Road where modest sheds, garages and summer-houses are the predominant forms of built development.
16. In addition the long and high blank brick side walls of the outbuilding that would form the boundaries with the two adjoining properties would be unattractive and overbearing features when viewed from those properties.
17. The fact that this part of the garden is currently neglected is not a matter I can take into account as it is a matter for the owner how he maintains his land. Nor do I place any weight on security issues raised by the Appellant particularly given the proposed door onto the rear service road.
18. I have noted the care with which this application has been proposed and the personal circumstances of the Appellant and note his wish to extend his property but these matters do not outweigh the harm I have identified.
19. The plan¹² submitted by the Appellant of the outbuilding recently granted permission shows what appears to me to be an office use with a sitting area and a separate area with a w.c. and a basin. There is no pergola and although I have been informed that it is 'marginally smaller' than the proposed building in this appeal¹³, I have not been given any dimensions. The planning permission for the approved outbuilding is a material consideration but given the differences between that outbuilding and the proposal in this appeal it does not affect my findings as set out above.
20. Whilst I note that the Council has imposed a number of conditions on the recent grant of planning permission, given my findings in respect of the proposal in this appeal I do not consider that the imposition of conditions would render the proposal acceptable.
21. Policy CS14 of the London Borough of Merton LDF Core Planning Strategy and Policy DM D2 of Merton's Sites and Policies Plan seek to ensure among other things that all development is designed to reinforce and enhance the local character of an area; that it relates positively and appropriately to the siting

⁹ Extract from drawing no AD/9000/22 Rev 1

¹⁰ Paragraph 6.9 of the Appellant's grounds of appeal

¹¹ AD/9000/AA Rev 1, AD/9000/21 Rev 1, AD/9000/22 Rev 1, AD/9000/24 Rev1, AD/9000/25 Rev 1, AD/9000/26 Rev 1 and AD/9000/30 Rev 1

¹² Drawing No AD/11000/21 Rev 1

¹³ Email from the Appellant's agent dated 28 March 2017

and scale of surrounding buildings and landscape features; and that it protects existing development from visual intrusion so that the living conditions of existing and future occupiers are not unduly diminished. For the reasons given above I conclude that the proposed outbuilding would not comply with these Policies and that it would have a harmful effect on the character and appearance of the area and on the living conditions of adjoining neighbours with regard visual amenity.

Appeal B: Conclusions

22. For the reasons given above and taking all other matters into account I conclude that the appeal should be dismissed.

Appeal B: Decision

23. The appeal is dismissed.

Gloria McFarlane

Inspector