
Appeal Decision

Site visit made on 10 May 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 17 May 2017

Appeal Ref: APP/G5180/X/16/3159515
5 Rodney Gardens, West Wickham, BR4 9DD

- 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 Mrs Olga Pikho against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/16/03550/PLUD, dated 26 July 2016, was refused by notice dated 22 September 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 new proposed gym outbuilding.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Decision.

Procedural matter

1. Although the appeal form was completed by Gianfranco Cipolla Architects LLP as the agents, the LDC application was made by Mrs Pikho and the appeal must therefore proceed in her name.¹

Main Issue

2. The main issue is whether the refusal of an LDC was well-founded. Article 3 and Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015 provide that, within specified tolerances, the provision of a building within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse as such, will be permitted development (PD). There is no dispute that the proposed building would be within the curtilage of the dwellinghouse and the Council accepts that it would also be within the limitations set out in Class E.1.
3. The only disputed issue is whether the proposed building would be provided for purposes incidental to the enjoyment of the dwellinghouse as such. It is for the appellant to demonstrate, on the balance of probability, that it would be so provided.

Reasons

4. The Council contends that the scope of purposes incidental to the enjoyment of the dwellinghouse is not determined by the "unrestrained whim" of the

¹ Section 195 of the 1990 Act.

occupier and I accept that this is well established. It also draws attention to *Emin v Secretary of State for the Environment* [1989] JPL 909, in which the High Court held that regard should be had to the use to which it was proposed to put a building and it is necessary 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. It was also held that 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 building was genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

5. The proposed building would comprise a gym, sauna, shower and storage area, with just over half the internal floor area being taken up by the gym. At a little over 60 sqm, the footprint of the proposed building would be similar to that of the dwelling itself. However, at around 51 sqm, the internal floor area would be significantly less, given that the house has 2 storeys. Furthermore, the building would replace an existing shed and a separate garage/store, in approximately the same location, at the end of the garden. Those existing outbuildings have a combined internal floor area of about 35 sqm, so the net increase would be modest.
6. The appellant says that she and Mr Pikho live in the house with 3 grown up children, who are actively involved in sport. The whole family intends to use the proposed gym and this is not disputed by the Council. The intention is to have at least 6 pieces of gym equipment, including: a treadmill; rowing machine; cycling machine; weightlifting bench and press; "hack squat machine"; and "lat pull down machine". A drawing Ref 1422-PL-04A indicates how the equipment could be arranged within the space set aside. There is nothing unreasonable about the gym facilities proposed for a single active family. The gym area would be no more than adequate for the suitable equipment proposed, along with the necessary circulation space, and there is nothing to indicate that this is not a genuine proposal.
7. I accept the Council's contention that a building which merely comprises the basic or primary accommodation expected in a dwellinghouse will not be provided for purposes incidental to the enjoyment of the dwellinghouse. Whilst the proposed building includes a shower and WC, and such things are normal dwellinghouse facilities, it is not unreasonable to include these alongside a gym and sauna.
8. The proposed gym facilities are on a reasonable scale, but they could not realistically be accommodated within the appellant's relatively modest 3 bedroom semi-detached house. The Council suggests that the range of uses proposed result in an overall building of considerable scale and it comments that, excluding the storage area, a building of this size would be sufficient to meet the London Plan minimum standard for a studio flat. However, the combination of a gym, shower and sauna is a reasonable one, alongside a modest storage area, to replace that lost through the removal of the garage and shed and the overall building would not be of a disproportionate size. Whilst the potential for a building to be converted to a separate dwelling may be of concern to the Council, in all the circumstances, I am satisfied that the proposed building is genuinely and reasonably required for the purposes

indicated by the appellant. In any event, any change to a separate dwelling would require planning permission.

9. On the balance of probability and, as a matter of fact and degree, I conclude that the proposed building would be provided for purposes incidental to the enjoyment of the dwellinghouse as such. Accordingly, it would have constituted PD if constructed at the date of the application. The refusal of an LDC was not well-founded and I will allow the appeal.

Decision

10. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

J A Murray

INSPECTOR

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 July 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It would have been permitted development within Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 2015.

Signed

J A Murray
Inspector

Date 17 May 2017

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First Schedule

A new gym outbuilding as shown on the drawings numbered 1422-EL-01A, 1422-EL-02A, 1422-PL-04A and 1422-PL-05A submitted with application Ref DC/16/03550/PLUD dated 26 July 2016.

Second Schedule

Land at 5 Rodney Gardens, West Wickham, BR4 9DD.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations 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 /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or 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: 17 May 2017

by **J A Murray LLB (Hons), Dip. Plan Env, DMS, Solicitor**

Land at: 5 Rodney Gardens, West Wickham, BR4 9DD

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Scale: DO NOT SCALE

