The Planning Inspectorate

Appeal Decision

Site visit made on 4 June 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 07 June 2017

Appeal Ref: APP/M3835/X/16/3160277
14 St Lawrence Avenue, Worthing, West Sussex BN14 7JE

- 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 Ben Reilly against the decision of Worthing Borough Council.
- The application Ref AWDM/0123/16, dated 27 January 2016, was refused by notice dated 6 May 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 construction of a games and gym/garden room building with permeable hard surface landscaping incidental to the enjoyment of the dwellinghouse together with alterations to the existing means of enclosure.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. The description of the proposed development was changed by the Council with the agreement of the appellant to "Proposed detached outbuilding to be used as garden/gym/games room in rear garden and part new fence to west elevation". I shall use this agreed description in my decision.

2. I was unable to view the accommodation in the main house because it is rented out by the appellant and thus there was no access available.

3. An application for a Lawful Development Certificate (LDC) is determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous.

4. In this case the appeal is considered against the provisions of the 2015 GPDO[1]. Consideration of the planning merits of the proposed development is outside the scope of this appeal. Class E of Schedule 2, Part 1 of the GPDO sets out the circumstances in which buildings or enclosures within the curtilage of a dwelling house are permitted development. In particular Class E (a) is relevant to "any proposed outbuilding…required for a purpose incidental to the enjoyment of the dwelling house as such".

5. Development is not permitted if it exceeds the limitations, pertaining to size and location, of Schedule 2, Part 1, Class E, E.1.(a)-(j). From what I have

[1] The Town and Country Planning (General Permitted Development) Order 2015

seen on the plans and read in the statements it is common ground between the parties that these limitations are not breached.

6. The *Permitted Development for householders: Technical Guidance* (PDTG)[2] provides an interpretation of Part 1 of the GPDO. This says that a large range of common buildings such as garden sheds, other storage buildings and garages are allowed as long as they can be properly described as having a purpose incidental to the enjoyment of the dwelling house.

Reasons

7. In short the Council's reason for the refusal of the LDC is because it is considered that the overall scale of the outbuilding, which would have a floor space of approximately 105m^2 goes beyond what could be considered incidental to the enjoyment of the main dwelling, No 14, which has a floor area said to be 77.6 m^2. The Council also says that the proposed building includes primary accommodation including a seating area, bar, shower room and toilet.

8. Both parties rely on case law and *Emin*[3] in particular. This says that the question to be addressed is "the nature of the activities to be carried on in the proposed building to ensure they are incidental or conducive to the very condition of living in the dwellinghouse". *Emin* continues "the fact that such a building has to be required for a purpose associated with the enjoyment of the a dwelling house cannot rest solely on the unrestrained whim of he who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case". Or in other words the word "required" in this context means that the building is genuinely and reasonably required for a purpose incidental to the dwellinghouse.

9. As pointed out by the appellant, *Emin* also says that when a matter is looked at as a whole, size may be an important consideration but it is not by itself conclusive.

10. The proposed building would provide a wide range of leisure facilities including an exercise mat and 5 separate items of gym equipment including a multi gym which would appear to provide a wide range of exercise opportunities in one machine. It would also provide what is described as a garden room and comprises space for two 3-seater settees and an occasional table. To the rear of the sitting area it is proposed to install a snooker table and bar area. The building would also provide a shower and toilet.

11. The block plan shows the proposed outbuilding and the exterior area immediately around it would be separated from the main dwelling and its retained area of lawn by a 2m high fence and planting which extends across the full width of the plot. Thus the only access from the main house to the existing garage and the greater part of the rear garden would be through the proposed outbuilding. This is because doors are proposed at the southern end of the outbuilding facing onto the retained lawn close to the main house. There also 2 sets of larger doors proposed on the west elevation facing and providing direct access via the proposed gate to Balcombe Avenue and smaller doors providing access to a strip of land 2m in width to the rear or east of the proposed building.

[2] *Permitted development for householders: Technical Guidance* Department for Communities and Local Government: Updated April 2016:
[3] Emin v SSE and Mid Sussex District Council [1989] 58 P.& C.R 416

12. The proposals as depicted on the block plan show that the existing curtilage of No. 14 would, in effect, be subdivided by the construction of the outbuilding and garden around it because access from the main house would only be possible through the proposed building. In itself this layout is not determinative but it does raise questions as to whether the use of the outbuilding would be in association with the dwelling itself.

13. I acknowledge that the provision of leisure equipment falls within what could be considered as incidental to the enjoyment of the dwelling house but whether the proposed building and the extensive facilities, including sanitary facilities, seating and bar area it would provide are genuinely required depends on the particular circumstances. In this case the distance between the proposed building and the host dwelling at about 10m is so small that it is questionable whether the provision of shower facilities, seating and a bar, are 'required'. In the case before me there is little or no evidence provided that seeks to explain why the occupier considers the range of facilities provided are necessary to his occupation of the dwelling as such.

14. I have taken account of the appeal decision relied upon by the appellant[4] but note that in that case the facilities replaced, at least in part, those previously provided in another part of the garden of a large detached house in what appears to be rural surroundings. In contrast No.14 is a dwelling located in a fairly well built-up suburban location and thus the context is different because of the inevitable close proximity between the house and any proposed outbuilding. In terms of size, as is made clear in *Emin,* this is in itself not conclusive but in this case the proposed building would have a footprint larger than the main house. It would be commensurate with or greater than that of the bungalows in the locality and this is a factor that is part of the equation that I must consider when coming to a view as to whether the proposed building would be incidental to the dwelling house.

15. Thus whilst I find on the one hand that leisure facilities can be considered incidental to the dwelling house as such, this must on the other hand be weighed against other material factors. In this case, firstly as I have noted above, the proposed building and the land around it would in effect be physically separated from the main house and the remainder of the garden. Secondly there is no explanation or explicit justification for the extent of the leisure facilities which are, as a matter of fact, commensurate with those found in a small club house or hotel. Thirdly, given the close proximity of the proposed building to the main house, the provision of shower and sanitary fittings go beyond what is 'required'. Finally, the footprint of the proposed outbuilding exceeds significantly that of the main house and hence appears disproportionately large.

16. Cumulatively and collectively it appears to me that the range and breadth of the leisure facilities that are proposed go far beyond what is required incidental or conducive to the very condition of living in the dwellinghouse". Borrowing the words of *Emin* it seems to me, in these circumstances that the proposed facilities amount to an 'unrestrained whim'. As noted above the onus of proof lies on the appellant and it seems to me that it has not been discharged. In the absence of any explanations or justification that suggest there is a requirement for the extensive facilities, and in the light of case law, I find that

[4] APP/R0660/X/10/2120458 dated 21 April 2010

the proposed outbuilding would not genuinely and reasonably be required for purposes incidental to the dwelling known as No 14 St Lawrence Avenue.

Decision

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the 'Proposed detached outbuilding to be used as garden/gym/games room in rear garden and part new fence to west elevation' was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR