
Appeal Decision

Site visit made on 18 July 2017

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 24 August 2017

Appeal Ref: APP/N1920/X/17/3170961

Two Stones, 30 Newlands Avenue, Radlett WD7 8EL

- 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 by William McGowen against the decision of Hertsmere Borough Council.
 - The application ref.16/2374/CLP, dated 11 December 2016, was refused by notice dated 3 February 2017.
 - The application was made under section 192(1)(a) 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 single-storey outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For purposes of clarity, I should explain that in an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background matters

3. Newlands Avenue lies parallel, and to the west of Watling Street, the main street through Radlett. It is developed predominantly with substantial detached houses on large plots. 'Two Stones' is a relatively newly built house standing on the north-eastern side of the Avenue, of two-storeys plus an attic floor. It occupies most of the width of the approximately 20 metre wide plot, with a narrow access way on each side.. The appellant says it has a footprint of 248 square metres – which closely accords with the Council's estimate of 245.5 square metres - and overall floorspace of 604 square metres.
4. There is an existing outbuilding, proposed for demolition, which stands in the back garden near the north-western corner of the plot. This has a footprint of about 45 square metres, plus an open porch of about 7 square metres. I saw inside this outbuilding a pool table, table football, a treadmill and a cycling machine. There were also a kitchen type sink, and a WC/wash-basin compartment. There is also a brick built storage shed in the north-eastern corner of the plot, with a fenced enclosure for oil tanks.

5. The proposed new outbuilding would be L-shaped, single storey, with a double pitched roof. The height to the ridge would be 3.99 metres. It would stand 2.2 metres from the side and back site boundary, and have a footprint of about 119 square metres. There would be a small entrance lobby in the re-entrant corner of the L. Off this, towards the main house, would be a gymnasium, off which in turn would be a small store, and a WC/wash-basin compartment. The gymnasium space, excluding the store etc. would be about 5.3 by 7.2 metres. Within the gymnasium are shown two treadmills, a spinning bike, a press bench, three exercise mats, and a piece of equipment not specifically identified near the door to the WC.
6. On the other side of the entrance lobby would be access to a play room/den and a games room. The internal size of these taken together would be about 5.3 by 10 metres. The proposal drawing shows a folding screen between the two rooms. Within the play room is shown a large L-shaped sofa, and table football, and within the games room a pool table.

Main Issue

7. The main issue before me is whether the Council's decision to refuse the issue of a LDC was well founded. In that regard the principal question is whether at the time of the application, the proposed development would have been permitted development under the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (the GPDO). The burden of proof is on the appellant to show, on the balance of probabilities, that this would be the case.

Reasons

8. The relevant provision of the GPDO in this case is Class E of Part 1, to Schedule 2. This permits, amongst other things, the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. Various preclusions are then set out in paragraph E.1 of Class E – such as limitations on dimensions of the building, the proportion of site coverage, and position of the building in relation to boundaries, and to the principal elevation of the original dwellinghouse. However, none of these preclusions apply in this case, and the question is whether the purpose of the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such.
9. The appellant says that the outbuilding is for use by the family – that is, the two parents, and four children aged from 8 to 15 years. It is claimed the existing gymnasium – at 35 square metres - is of insufficient size to accommodate safely the equipment reasonably required for family use. The games room is specifically to accommodate a pool table for use by all the family, and particularly the children. The playroom is again for use by all the family, and includes a sofa and television to enable the children to play console games, and also includes other games such as table football.
10. In the High Court case of *Emin*¹ it was held that the test to be applied in assessment of whether a use was incidental was set out as '*...whether the uses of the proposed buildings, when considered in the context of the planning unit,*

¹ *Emin v SSE & Mid Sussex DC* [1989] 58 P & CR 416.

are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. Furthermore, regard should be had to '...the use to which it is proposed to put a building, and to considering the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse'.

11. There is little justification provided as to why it is reasonably required to provide gym facilities for some seven or eight activities to go on simultaneously, as well as having a games room dedicated to pool playing. This is particularly so given that the existing gym – which has an area comparable with the proposed gym, when the service rooms are excluded – clearly provides for both exercise equipment as well as a pool table. I consider that both gymnasium activities and a games room are potentially subordinate and incidental to the use of the dwellinghouse as such. However, I consider the spaces given over to these are, as a matter of fact and degree, somewhat over-generous, and significantly greater than might reasonably be required.
12. I was not able to see the interior of Two Stones itself. However, for a house of such considerable size – slightly over 600 square metres – the playroom activities proposed are very likely to be accommodated already, and it is questionable whether this is an incidental use. In my view for a house as substantial as Two Stones, a playroom for such things as watching television should be seen as primary living accommodation, rather than being incidental to enjoyment of the dwellinghouse as such.
13. With regard to a distinction made by the judge in *Emin*, I consider this is a case where the wish for additional space has been driven to a great extent by unrestrained whim, rather than the reasonable aspirations of the appellant for accommodation that is sensibly related to the enjoyment of his dwelling.
14. Overall, I do not consider the appellant has provided sufficient evidence to show that on the balance of probabilities the proposed uses of the outbuilding would be incidental to the use of the dwellinghouse as such. 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 single-storey outbuilding was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me by section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR