



Appeal Decision

Site visit made on 21 August 2017

by Jessica Graham BA (Hons) PgDipL

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

Decision date: 06 September 2017

Appeal Ref: APP/R5510/X/17/3171307

46 Fairway Avenue, West Drayton, UB7 7AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 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 Mr and Mrs McMahon against the decision of the Council of the London Borough of Hillingdon.
 - The application ref: 36087/APP/2016/3695, dated 3 October 2016, was refused by notice dated 30 November 2016.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of an ancillary outbuilding in the rear amenity space.
-

Decision

1. The appeal is dismissed.

Main issue

2. Under Article 3 of the *Town and Country Planning (General Permitted Development) Order 2015* as amended (the GPDO) planning permission is granted for classes of development described as permitted development in Schedule 2. Class E(a) of Part 1 of Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse as such, subject to a number of conditions and limitations. The Council and the appellant agree that none of the conditions and limitations to which Class E(a) is subject would be breached by the proposal, and I concur. The difference between the parties, and the key question for this appeal, is whether the proposed development would be required for a purpose incidental to the enjoyment of the dwellinghouse at 46 Fairway Avenue.

Reasons

3. In order for an LDC to be granted under s192 it is necessary for the appellants to show, on the balance of probabilities, that the development would be lawful.
4. The development here proposed is a single-storey outbuilding, with a footprint of some 82.2m². I note that there have been two previous appeals concerning a proposed outbuilding of similar size, in the same position. The first concerned the Council's refusal to issue an LDC for an outbuilding to contain a home

office, gym, shower room and store.¹ That refusal was upheld at appeal, on the grounds that there was no explanation as to why the large areas proposed were reasonably required for purposes incidental to the use of the dwellinghouse². The second concerned the Council's refusal to grant planning permission for an outbuilding for use as a table tennis room and home gym³. The appeal against that refusal was dismissed, on the grounds that the design of the building would be harmful to the character and appearance of the host dwelling and the local context.⁴

5. The evidence of the appellants is that the outbuilding now proposed would be used primarily as a gym, with 12.6m² of the floorspace given over to the storage of garden furniture and equipment. Both of the appellants and their son, who lives at home with them, actively pursue various sports and martial arts as hobbies, and would use the gym to train for these in their spare time. I am told that the building needs to be large enough to accommodate a punch bag, a martial arts floormat and the appellants' sizeable collection of gym equipment, and that the layout has been designed so that all three members of the household could simultaneously use the equipment, floor space and punch bag if necessary.
6. Case law arising from the judgment in *Emin v SSE & Mid Sussex DC* [1989] EGCS 16 identifies the test for whether a proposed outbuilding is required for purposes incidental to the enjoyment of the dwellinghouse as such. That test is "...whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house." The Court held that the size of the outbuilding in relation to that of the dwellinghouse is an important consideration in this regard, but is not by itself conclusive. The judgment also makes clear that the appropriate question for the decision maker is "...whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose".
7. The term 'required' is therefore interpreted for the purposes of applying Class E of Part 1 of Schedule 2 to the GPDO as meaning 'reasonably required'. I am satisfied that, in principle, the proposed gym and storage space are facilities that may be regarded as reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The ability to train at home is something that residential occupiers, particularly those with a keen interest in physical fitness, might reasonably aspire to in seeking to improve their quality of life. Moreover, the fact that the footprint of the outbuilding would be larger than usually expected for a home gym, and comparable to that of the main dwelling, does not necessarily undermine the contention that its use would be incidental to the enjoyment of that dwellinghouse.
8. However, in this case, the property already benefits from the presence of other sizeable outbuildings. While these were not shown on the plan which accompanied the LDC application, they are located in the rear garden of No. 46 and the undisputed evidence of the Council is that their combined footprint is 99m². I share the Council's concern that the appellants have not provided any

¹ Ref 36087/APP/2010/844

² Ref APP/R5510/X/10/2130342

³ Ref 36087/APP/2013/999

⁴ Ref APP/R5510/A/13/2204881

information at all as to the current and future use of these buildings. There is, for example, no explanation given as to why the gym equipment and punchbag could not be housed in one of the existing outbuildings, and garden furniture stored in another. It is not therefore possible to reach a reliable conclusion that an additional outbuilding, of the considerable size here proposed, is genuinely and reasonably required or necessary to accommodate the uses and activities proposed.

9. I conclude that the appellants have failed to show on the balance of probabilities that the proposed development would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E(a) of the GPDO. A grant of express planning permission would be required. The Council's decision to refuse to grant a LDC was well-founded, and the appeal fails. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Jessica Graham

INSPECTOR