



Appeal Decision

Site visit made on 5 September 2017

by C Sherratt DipURP MRTPI

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

Decision date: 11 September 2017

Appeal Ref: APP/P4605/X/17/3171980

11 Norley Grove, Birmingham, B13 0DR

- 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 Abraham Khan against the decision of Birmingham City Council.
 - The application Ref 2016/05143/PA, dated 15 June 2016, was refused by notice dated 10 August 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 rear outbuilding / annex to property.
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Decision

1. The appeal is dismissed.

Reasons

2. In the case of an application for a certificate of lawful development the planning merits or otherwise of a proposal are of no relevance. The appeal turns solely on whether the development proposed was, on the date of the application, lawful. The relevant test is on the balance of probability. The appellant's case is that the development proposed is development permitted under the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order (GPDO). Class E permits, within the curtilage of a dwellinghouse, the erection of a building required for a purpose incidental to the enjoyment of a dwellinghouse as such subject to a number of conditions and limitations. Whether a building is required for a purpose incidental to the enjoyment of the dwellinghouse as such will depend on a fact and degree assessment.
3. Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house. Technical Guidance on 'Permitted development rights for householders' issued by the Department for Communities and Local Government confirms that Class E allows, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples given include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house. It clarifies that 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.

4. A residential annex would normally include primary living accommodation. Indeed the plans that accompanied the application for a certificate of lawfulness for an outbuilding / annex show that the proposed building would incorporate a kitchen, lounge, bathroom and two bedrooms. This is clearly primary living accommodation. Indeed it would contain all the facilities necessary to function as a separate self-contained unit of accommodation. It could not be regarded as a building for purposes incidental to the enjoyment of the dwelling.
5. Furthermore, I share the Council's view that the scale of the building which has a footprint far greater than the existing semi-detached property would not be of a scale that could be regarded as incidental. I also note the intention to create a separate access and erect a 1.8m high fence to separate the building from the host dwelling. Such separation would not result in a building incidental to the enjoyment of 11 Norley Grove.
6. To conclude, on the balance of probability, the building proposed would not be for purposes that could reasonably be regarded as incidental to the enjoyment of the dwellinghouse. Accordingly it could not benefit from Class E and is therefore development requiring planning permission. For the reasons given above, the Council's refusal to grant a certificate of lawful use or development in respect of rear outbuilding / annex to property 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.

Claire Sherratt

INSPECTOR