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## Appeal Decision

Site visit made on 10 June 2019

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 23 July 2019**

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**Appeal Ref: APP/N1920/X/18/3213578**

**38 Elmwood Avenue, Borehamwood, Hertfordshire WD6 1SZ**

- 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 A Georgiev against the decision of Hertsmere Borough Council.
  - The application Ref 18/1541/CLP, dated 1 August 2018, was refused by notice dated 26 September 2018.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which an LDC is sought is the erection of a single storey detached outbuilding to rear garden for use as a gym and garden store.
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This decision is issued in accordance with section 56(2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 18 June 2019.

### Decision

1. The appeal is dismissed.

### Reasons

2. 38 Elmwood Avenue is a two storey semi-detached dwelling with a rear garden. The outbuilding would be within the curtilage of the dwellinghouse and it would satisfy the dimensional conditions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The Council maintains, however, that the proposed outbuilding, given its scale and intended use, cannot be considered to be required for purposes incidental to the enjoyment of the occupiers of the existing dwelling.
3. The case of *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416* established that "The term 'required' is...interpreted for the purposes of applying Class E as meaning 'reasonably required'". In *Wallington v Secretary of State for Wales [1991] 1 PLR 87* it was found that, in decision making, objectivity needs to be applied and that a purpose incidental to the enjoyment of a dwellinghouse could not be the result of the 'unrestrained whim' of the occupier.
4. The main issue is whether the outbuilding, taking account of its scale and intended use, is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

5. The dwelling has a footprint of about 53 square metres. In 2018 planning permission was granted for a single storey side and rear extension which, if built, would have a footprint of about 79 square metres. The rear garden, at the time of the site visit, was overgrown and littered with building materials and equipment. The proposed outbuilding would be close to the rear boundary of the property and would have a footprint of about 60 square metres.

6. The proposed outbuilding is intended to be used as a garden room/gym and a garden store. Taking into account the overgrown nature and size of the rear garden, it would be only about 150 square metres, there does not appear to be any reasonable requirement for a garden store of about 15 square metres. Furthermore, the Appellant has not provided any evidence to demonstrate that a garden room/gym of about 40 square metres is reasonably required for purposes incidental to the enjoyment of the dwellinghouse, in addition to the accommodation granted planning permission in 2018. In this regard it is possible that the proposed outbuilding is simply intended to maximise the potential permitted development rights for the property, and can therefore be categorised as resulting from the 'unrestrained whim' of the Appellant.

7. Taking the aforementioned factors into account, and on the evidence now available, the Council's refusal to grant an LDC in respect of the erection of a single storey detached outbuilding to rear garden for use as a gym and garden store on land at 38 Elmwood Avenue, Borehamwood, Hertfordshire was well-founded and the appeal thus fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

*John Braithwaite*

Inspector