
Appeal Decision

Site visit made on 15 August 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 02 September 2019

Appeal Ref: APP/R5510/X/18/3219472
15 Eighth Avenue, Hayes UB3 2EU

- The appeal is made by Manjit Singh Sahota under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Hillingdon to grant a lawful development certificate.
 - The application Ref: 72052/APP/2018/3006, dated 9 August 2018, was refused by notice dated 9 October 2018.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is "Single storey detached outbuilding to rear for use as a dojo/gym".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which are considered to be lawful if begun at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the operations would be lawful if begun at the time of the application for the certificate. The planning merits of the operations are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application because they considered the operations would not be permitted by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class E permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to the detailed limitations set out in E.1. The Council reached this conclusion because the "overall size and scale" of the outbuilding was "not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse". The officer's report confirms that the detailed limitations in E.1 would all be complied with.
 4. 15 Eighth Avenue is a two-storey end-of-terrace house with a single-storey rear extension. The only existing outbuildings are a detached garage and a small garden shed. The house has an existing floor area of roughly 100m².
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5. The proposed outbuilding would be built across the end of the rear garden and would occupy an area of about 66m². Most of its floorspace would be an open area to be used for the dojo/gym activities. There would also be two small storerooms and a room containing a shower, a wash hand basin and a toilet.
6. My understanding of the principles that apply to the phrase "required for a purpose incidental to the enjoyment of the dwellinghouse as such" is as follows: -
 - The concept of Class E is broad and a wide range of incidental purposes is permitted.
 - The incidental purposes must be connected with the running of the house or the domestic, recreational or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building.
 - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. The use of the building should be subordinate to the use of the house as a dwellinghouse.
 - The size of the building in comparison to the size of the house is a relevant, but not a decisive, factor in this assessment. The comparison should be with the whole of the house as it existed at the time of the application, since this is the house in respect of which Class E permits development.
 - The issues are to be decided with an element of objective reasonableness, as a matter of fact and degree in each case.
7. The officer's report approaches the term "required" in this phrase as meaning that there is an emphasis on an applicant showing a requirement for the outbuilding as part of their application. This approach could oblige an applicant to prove a need for a building based on their personal lifestyle and household circumstances. It could lead, for example, to applications being refused for a freestanding garage because the household did not have the use of a car at the time or for a greenhouse because no-one in the household had shown an interest in cultivating plants. The phrase "required for a purpose incidental to the enjoyment of the dwellinghouse as such" should in my view be considered as a whole, applying the principles set out in paragraph 6 above.
8. There is no statutory limitation on the incidental purposes for which an outbuilding may be provided. A wide range is usually taken to be included, as long as the purposes are connected to the running of the house and to the domestic, recreational or leisure activities of its occupiers and do not involve the provision of primary living accommodation, such as a bedroom, bathroom, or kitchen. The purpose put forward by the appellant - a dojo/gym for use by the household - is in my opinion capable of being a purpose "incidental to the enjoyment of the dwellinghouse as such" for which an outbuilding may be required. I do not consider that the inclusion of the shower room amounts to the provision of primary living accommodation, because it is reasonably necessary for users of the dojo/gym to have these facilities close at hand, since they would otherwise have to return to the house each time they needed them.

9. I have assessed the application with the necessary element of objective reasonableness. The appellant is an accomplished karate performer and he is teaching his two young children the art as well as practising himself. He has explained in detail why an outbuilding of the size proposed is required in order to practise the relevant techniques. It is self-evident that the activities could not be accommodated in the house. As a matter of fact and degree, I consider that the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse within Class E.
10. I have concluded that the operations would be lawful if begun at the time of the application for the certificate. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR