



Appeal Decision

Site visit made on 2 September 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeal Ref: APP/Z0116/X/19/3219639

154 Marksbury Road, Bedminster, Bristol BS3 5LD

- 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 John Fry against the decision of Bristol City Council.
 - The application Ref 18/02756/CP, dated 23 May 2018, was refused by notice dated 5 July 2018.
 - 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 the erection of an outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful development was well-founded.

Preliminary matter

3. On my visit I noted that a new outbuilding has been erected within the garden of the appeal property. This building does not form part of the proposed development for which a certificate is sought, and I have not taken it into account in my decision.

Reasons

4. It is proposed to erect a large outbuilding within the rear garden of a terraced house. Class E of Part 1, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 allows for the erection of outbuildings for purposes incidental to the enjoyment of the dwellinghouse as such, subject to meeting certain criteria. There is no dispute that the proposed building would meet all of the relevant criteria. The matter in dispute is whether the use to which the building would be put would be incidental to the enjoyment of the dwellinghouse as such.
5. The plans accompanying the application show a building measuring 10.07m by 6m, divided internally into four rooms, comprising a games room, a shower room with toilet, a home office and a fitness room. On the face of it,

these are activities which could be considered to be incidental to the primary residential use of the dwelling house.

6. By way of background, until recently the house had been occupied by tenants, and a separately tenanted outbuilding in the rear garden had been used unlawfully as a separate dwelling. The outbuilding is the subject of an effective enforcement notice which requires the building to be demolished. However, the appeal proposal is for the erection of a new building, and thus I must deal with the question of its lawfulness on the basis of the particular circumstances of this case.
7. The building would be built on part of the former rear garden of the next-door house at 152 Marksbury Road, which has been acquired by the appellant. However, that acquisition is irrelevant in terms of the Order – the enlarged garden forms part of the curtilage of the appeal property. The Council suggests that the need to acquire this land to accommodate the building is a factor which contributes to it falling outside of the scope of incidental use, and I shall discuss this further below.
8. The leading case on the scope of buildings used for purposes incidental to the enjoyment of the dwellinghouse as such is *Emin v Secretary of State for the Environment and Mid-Sussex District Council (1989)*. Whilst the Court acknowledged that such questions are largely a matter of fact and degree, some key principles were set out. The Court held that the nature and scale of the activities are important as there must be a prospect that they could go beyond a purpose merely incidental to the enjoyment of the dwelling house as such and constitute something greater than a requirement related solely to that use. Thus, the physical size could be a relevant consideration, but it is not by itself conclusive.
9. The Court also acknowledged that the use must connote some sense of reasonableness in all the circumstances of the case, and that incidental uses should remain at all times ancillary or subordinate to the use of the dwelling house, and that it was necessary to determine whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that incidental purpose.
10. In this case, the dwelling house has one modest-sized living room, a kitchen, toilet and bathroom downstairs, and three bedrooms and a bathroom on the first floor. Besides the recently constructed outbuilding, which looks like a store, there are no other outbuildings within the curtilage. Accordingly, there is no scope for accommodating a home office, a games room and a gym within the dwelling.
11. The outbuilding would be large, with a floor area of 64 sq.m., larger than the footprint of the host dwelling, but smaller than its total floor area. However, relative size is not a determining matter on its own; in the *Emin* case referred to above, two buildings were involved, both around the size of the dwelling to which they were held to be incidental. The Council makes the point that the larger the curtilage, the more readily an incidental building can be accommodated. In this case, the proposed building would occupy about a third of the area of the rear garden. However, it would occupy almost all of the width of the part of the garden at the rear of 152 Marksbury Road, and

two-thirds of the width of the garden immediately to the rear of 154 Marksbury Road. It would be much larger than any outbuildings in the vicinity, but again this is not a determinative matter.

12. The appellant says that the additional facilities proposed are required for the current occupier's family, which includes teenage children. However, I saw on my visit that the house was clearly unoccupied and was largely unfurnished. I have been told nothing of the circumstances of any prospective occupier. The house is in a poor state of decoration and the age and quality of its fittings is unlikely to justify high rental values. To my mind, the provision of a games room, gym and home office would provide a high standard of amenity which would be out of accord with the more meagre standard of accommodation within the main dwelling.
13. It is for an appellant to show that a building of a proposed size is reasonably required, and that it would be designed with incidental uses in mind, having regard to all the circumstances. The proposed room sizes are large; the home office would be extremely generous for casual office use, even by two people. The games room, at about 6m long and what I estimate to be about 4.5m wide is also very large for an unspecified "games" use. No specific games or gym equipment has been indicated as being wanted.
14. With unspecified occupiers, whose needs and wishes cannot be ascertained, I cannot be satisfied on the balance of probabilities that the building would be genuinely or reasonably required for the purposes proposed. Accordingly, on the evidence before me, the need for the large size of the building and the facilities proposed has not been adequately justified, and the failure to satisfy this test means that it has not been demonstrated that the proposed building is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. It would not therefore be permitted development under Class E.
15. I have had regard to the various appeal decisions referred to me, and whilst several relate to buildings of a similar or larger size and use, each case turns on its specific facts, and none are identical to the circumstances of this appeal.

Conclusion

16. I conclude that the Council's refusal to grant an LDC in respect of the erection of an outbuilding was well-founded and that the appeal should fail.

JP Roberts

INSPECTOR