



Appeal Decision

Site visit made on 8 October 2019

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/G5180/X/18/3217436

19 Park Avenue, Farnborough, Orpington BR6 8LJ

- 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 Richard Leahy against the decision by the Council of the London Borough of Bromley.
 - The application, Ref DC/18/03984/PLUD, dated 3 September 2018, was refused by notice dated 20 November 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 described as the construction of a single storey outbuilding in the rear garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application for a single storey outbuilding in the rear garden against the provisions set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

Main Issue

3. As the appeal is confined to the narrow remit of reviewing the Council's decision, the main issue is whether that decision was well-founded or not well-founded.

Reasons

4. The appeal relates to a detached, five bedroom, dwelling situated in a substantial plot of land extending to approximately 0.5ha within the Farnborough Conservation Area. The appellant proposes to erect an entertainment and fitness studio in the form of a detached single storey outbuilding towards the rear of the garden, beyond the existing tennis court.

5. The drawings show a building approximately 20m in width and 9m in depth, with a shallow pitched roof. The entrance would be set back to provide a large open porch area. This would open into a large lobby area with doors leading into several rooms. There would be a study, a WC and a fitness room in the central portion of the building. To the left of the lobby there would be a hydrotherapy pool, a changing area, a shower and WC and to the right of the lobby there would be a billiards room and a TV and Sports room containing a bar and a darts area.
6. The Council's reason for refusal is that the proposal would not constitute permitted development (PD) under Class E as, on the balance of probabilities, the proposed outbuilding would not be reasonably required for purposes incidental to the enjoyment of the dwelling. Class E of the GPDO grants planning permission for any building or enclosure, swimming or other pool within the curtilage of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as such, subject to certain conditions and limitations. The parties agree that the proposed outbuilding would not contravene any of the specific physical requirements and limitations set out in Class E and I see no reason to take a different view.
7. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case.¹ The outbuilding will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.
8. Following the outcome of an earlier appeal² for a similar development, the appellant has now provided the following details regarding the proposed uses of the outbuilding:
 - a fitness room, which would contain a floor mat, a treadmill and a bicycle machine and could accommodate up to 3 people at any one time;
 - a TV and Sports room, with a sitting area, a bar and a dart board (with a playing area that is of a size that complies with the recommended standards) and could accommodate the whole family (seven people);
 - a billiard room, containing a billiard table and seating and would be of a size that complies with the recommended standards for tables and cues;
 - a study, which would be for the personal use of the applicant;
 - a hydrotherapy pool room, which would be primarily for use by one of the applicant's children, who is a registered disabled person, and could accommodate up to four people at any one time; and
 - a sauna, a shower room and changing rooms which would be used by people using the pool, fitness room and the tennis court in the garden.

¹ Emin v SSE & Mid Sussex DC [1989] EGCS 16 and Croydon LBC v Gladden [1994] 1 PLR 30

² Appeal Ref: APP/G5180/X/17/3182482

9. I consider that a gym is capable of being a use incidental to the residential use of a main dwelling. In this case the space allocated for the gym use would accommodate three pieces of equipment and a maximum of three people. I am satisfied that such a facility would be ancillary to the main house.
10. The study would accommodate a desk and bookcases. The space allocated to it would be not unlike making use of a small bedroom within the main dwelling. In this case the appellant has five children. At the site visit I saw that, in addition to the master bedroom, there are four bedrooms at first floor level occupied by four of the children and the living space on the ground floor adjacent to the lounge is used as a fifth bedroom. In addition to the lounge, there is an open plan kitchen/dining/living area occupying the rest of the ground floor of the building. Consequently, the appellant makes use of the triple garage area adjacent to the dwelling, not for parking but as his study, with a desk and shelves for files; a separate utility and laundry room and a gym/relaxation area. I consider that the study within the outbuilding is capable of being a use incidental to the residential use of the main dwelling.
11. I also consider the hydrotherapy pool and sauna are capable of being a use incidental to the residential use of the main dwelling. Given that the outbuilding would be sited approximately 75m away from the house, it would not be unreasonable to provide space for a changing area. I also regard the shower and WC to be ancillary to the incidental wet uses and gym. However, it is not clear why there needs to be a second WC off the lobby. The appellant makes no comment on this facility.
12. Turning to the billiards room, the appellant submits information to demonstrate the requirements for its size and as a use I consider it is capable of being a use incidental to the residential use of the main building. Such are the specific requirements for adequate space, that they did not appear to be a billiard table in the triple garage area, which is currently fully occupied by the uses I have already outlined.
13. This brings me to the TV and Sports room. Whilst a portion of it would be laid out to meet the requirements of a darts board, most of the room would be laid out and used as a lounge with a TV and a small bar in the corner. It is my view that this aspect of the building provides primary living accommodation. The Department for Communities and Local Government publication "Permitted development rights for householders: technical guidance" sets out the meaning of incidental does not cover use of an outbuilding for primary living accommodation, such as a lounge. The appellant submits that this room would have a large screen TV but it seems to me that many living areas within dwelling houses these days have large screen, wall mounted, televisions. This does not explain why it needs to be within an outbuilding in the garden.
14. In order for a building to be considered as PD all of it must be required for incidental purposes. A building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwelling. The TV and Sports room is largely a lounge and this use could reasonably be expected to be accommodated in the main dwelling. The use of this space would not materially differ from the use of either the open plan kitchen/dining/seating area with its breakfast bar, sofas and TV or the separate lounge within the main dwelling. As such, the outbuilding merely replicates the use of the existing accommodation within the house and extends the primary residential

use into the proposed outbuilding. In addition, whilst I have found that one WC could be considered to be ancillary to an incidental use, it is not clear what purpose is served by the second WC.

15. Therefore, whilst I am satisfied that some of the proposed activities could be said to be incidental, I am not satisfied that as a whole the outbuilding would be required for incidental purposes. Therefore, it would not fall within the scope of Class E as PD.
16. The Council submit the floor space of the outbuilding, which is about 170sqm is significantly large when compared to the floor space of the existing dwelling at around 260sqm (aggregate of ground and first floor areas). Having regard to *Emin*, such a generous amount of floor space does not in itself preclude the lawfulness of an outbuilding. Having viewed the main dwelling, it is clear that the appellant makes use of all the available space at ground and first floor level as primary living accommodation and has chosen to forgo his garaging area in order to accommodate other uses for which there is no space within the main dwelling. This would appear to indicate that he has a desire, if not a need, for some additional space to accommodate that which he aspires to.
17. However, on the evidence before me, I am not satisfied, as a matter of fact and degree, that the totality of the proposed outbuilding is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities. It therefore would not fall within the parameters of Class E, Part 1, Schedule 2 to the GPDO. Accordingly, it would not have been lawful at the time of the LDC application.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey outbuilding was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D Fleming

INSPECTOR

