



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

Appeal Ref: APP/Q5300/X/19/3220325
33 Hadleigh Road, Edmonton N9 7BU

- 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 Mrs Fatma Kemal against the decision of the Council of the London Borough of Enfield.
- The application Ref 18/03922/CEA, dated 11 October 2018, was refused by notice dated 7 January 2019.
- 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 a detached outbuilding for use as an office.

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. After seeking the views of both main parties, I concluded that a site visit was unnecessary as having regard to the submitted plans, it would not have added to my understanding of the proposal.

Application for costs

2. An application for costs was made by Mrs Fatma Kemal against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether it has been shown that the proposal would be granted planning permission by Article 3, Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

4. The onus is on the appellant to show that an LDC should be granted for the proposal, the relevant test of the evidence being on the balance of probability.
5. The appeal site contains an extended end of terrace dwelling. The proposal involves erecting a single storey flat roofed building in the rear garden. The building would be sited immediately adjacent to an existing single storey rear extension. The building would extend parallel to the rear elevation of the extension up to both side boundaries with adjoining residential properties.

6. The GPDO Article 3, Schedule 2 Part 1 Class E grants planning permission for the provision within the curtilage of a dwelling of any building which is required for a purpose incidental to the enjoyment of the dwelling as such, subject to certain limitations and conditions. Both main parties agreed that the proposal would not breach the size, height and locational limitations for a Class E building in paragraph E.1. Following my own assessment, I concur.
7. The Courts have confirmed that the concept of what is incidental to the enjoyment of a dwelling as such involves an element of objective reasonableness and does not rest solely on the unrestrained whim of the occupier. To fall within Class E, a building must be 'required for some incidental purpose' in relation to a dwelling. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling, and whether the building would be genuinely and reasonably required to accommodate the proposed use or activity and thus achieve that purpose¹.
8. The Government's Technical Guidance² advises that a purpose incidental to a dwelling does not cover use as primary living accommodation. There is no clear and precise evidence on the intended use of the proposed building. The appellant did not elaborate on the proposed office use. Such a use by occupiers of the dwelling might be an incidental activity but depending on the circumstances, it could also form part of the primary living accommodation. Consequently, the available evidence does not show that the use of the building would have a functionally subordinate relationship with the primary residential use of the dwelling.
9. The limitations in Class E do not prevent an incidental building from being sited very close to a dwelling. Even so, siting the building only around 5 centimetres away from the rear elevation of the dwelling for the entire width of the site would provide little obvious practical benefit in terms of an incidental use. In addition, the siting would restrict the existing outlook from ground floor windows at the rear of the dwelling; this is a relevant factor in relation to the reasonableness and practicality of the proposal.
10. Therefore, when looked at objectively and having regard to the absence of any alternative explanation, to my mind the siting of the building appears to have been contrived to try and make the proposal fit within the limits of Class E, rather being than a genuine consequence of the intended function. As a result, the available evidence also does not show why the siting would be reasonable in relation to the proposed use of the building.
11. For the reasons set out above, the available evidence does not show that the building would be required for a purpose incidental to the enjoyment of the dwelling as such.
12. Moreover, although in theory they are not connected, the separation between the rear elevation of the dwelling and the building would be so small as to be *de minimis*. Given the minimal separation between them, the building would be bound to have a more intimate visual relationship with the dwelling than might normally be typical of a building in an incidental use. The building would generally be seen as a further enlargement of the dwelling, as opposed to a

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909; *Croydon London Borough Council v Gladden* [1994] 1 PLR 2.

² Permitted development rights for householders: Technical Guidance MHCLG September 2019.

separate structure. This would be especially the case in views from the rear garden and the adjoining residential properties. Also, in practical terms given the minimal separation there is likely to be some form of physical attachment between the building and the dwelling in any event.

13. Due to the above factors, in my view as a matter of fact and degree, the building would exhibit a significant level of attachment to the dwelling, in both visual and physical terms. The Technical Guidance advises that a building attached to a dwelling would not be permitted by Class E.
14. Therefore, on the balance of probability it has not been shown that the proposal would be granted permission by Article 3, Schedule 2, Part 1 Class E of the GPDO.
15. Both main parties agreed that the proposal would also not be granted permission by the GPDO Article 3, Schedule 2 Part 1 Class A. Following my own assessment, I concur. This is because the proposal would extend beyond the rear wall of the original dwelling by more than three metres, in breach of the limitation in paragraph A.1 (f) (i) of Class A.

Conclusion

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

Formal Decision

17. The appeal is dismissed.

Stephen Hawkins

INSPECTOR