



Appeal Decision

by Hilary Orr MSc, MRTPI

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

Decision date: 22 November 2019

Appeal Ref: APP/T5150/X/19/3223789
90 Draycott Avenue, Harrow HA3 0BY

- 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 Hadi Akbarpour against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/1821, dated 13 May 2018, was refused by notice dated 9 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 for the proposed erection of a single storey outbuilding in rear garden to dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural matter

2. This appeal is a determination of whether planning permission is required for the proposed development, in the particular circumstances of the site. Upon review of the appeal and the submissions from the Appellant and the Council a logical decision on the appeal can be reached without the need for a scheduled site visit. I have therefore considered the appeal on this basis.

Main Issue

3. I consider that the main issue is whether the proposed development falls within the limits of Class E of the Town and Country Planning (General Permitted Development) Order 1995 (GDPO) as amended.

Reasons

4. The appeal site comprises a two storey dwelling within a primarily residential area. An application for a Lawful Development Certificate (LDC) was submitted to the Council on 13 May 2018. The Council's position is that it has not been demonstrated that the outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse, and thus cannot be described as permitted development under Class E. The parties agree that the proposed development would accord with the other limitations set out in the Order.

5. My attention has been drawn to a recent appeal (APP/T5150/X/18/3211950) for a similar proposal at the site. That appeal was dismissed. The Inspector considered that the proposed building would not be required for purposes incidental to the use of the dwelling house. The main differences are, that the shower room, which was considered to be primary living accommodation, has been omitted from this proposal. The proposed outbuilding is now referred to as a gym on the plans submitted as part of this LDC application and in the appellant's letter of support for the application. The appellant argues that it has been designed to provide sufficient space for the appellant and his family to exercise together.
6. Class E refers to buildings etc incidental to the enjoyment of a dwellinghouse. It goes on to state that 'The provision within the curtilage of the dwellinghouse of— (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, ...'
7. The case of *Emin v The Secretary of State for the Environment and Mid Sussex District Council* (1989) considers matters of size for this type of proposal. In that case the court held that the use of a building cannot rest solely on an unrestrained whim but must have some sense of reasonableness in the circumstances of the particular case. Therefore, whilst size is not, in itself a determining factor, the evidence must nonetheless demonstrate that what is proposed, in terms of floorspace, is genuinely and reasonably required. Moreover, when evaluating whether the development is reasonably required, matters such as personal preference are not conclusive factors.
8. It is not unusual for a modest gym to be provided in an outbuilding to a dwelling, for the personal use of the occupiers. However, the Council's evidence confirms that the proposed building has a footprint of approximately 64 square metres, being some 45% of the footprint of the original dwelling. The appellant has provided limited justification, in that due to working shifts he cannot use commercial gym facilities. The gym is intended to give him the flexibility to exercise when possible, and with his family.
9. I acknowledge that if a family were all using the gym at the same time, the building would need to provide them with adequate space. However, the plans give no indication about what type of equipment would be needed, how the internal space would be utilised or why a gym on this scale is required.
10. I accept that a building to provide a personal gym at home is reasonable. However, whilst accepting that the nature of the use is not unacceptable, in terms of its scale, there is little before me to justify that the very generous building proposed, would be genuinely and reasonably required for an incidental use of the house.
11. In LDC cases, the onus of proof is on the appellant, and the level of proof is on the balance of probabilities. I consider that, it has not been demonstrated that on the balance of probabilities, the proposed building would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. In reaching this finding there is no reason to go on to consider the other limitations set out in the GDPO.

Conclusion

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

Hilary Orr

INSPECTOR