



Appeal Decision

Site visit made on 30 December 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2020

Appeal Ref: APP/R5510/X/19/3228931

37 Moray Avenue, Hayes UB3 2AX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development ("certificate").
 - The appeal is made by Mr Salim Rupani against the decision of the Council of the London Borough of Hillingdon.
 - The application ref. 67415/APP/2019/607, dated 19 February 2019, was refused by notice dated 12 April 2019.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 4 of the application form as "*Proposed outbuilding to be used for Garden (sic) storage and gymnasium/games room*".
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operations which are found to be lawful.

Matters of clarification

2. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.
3. The Council notified the Planning Inspectorate at an early stage that a representative would not be available on the day of my visit. Further to the letters dated 13 December 2019 to the parties, after the appellant permitted access to the property, my visit was conducted on an unaccompanied basis.

Main issue

4. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

5. The appeal property is a 2-storey, semi-detached house with a fairly long rear garden and a detached single garage. The house has been extended to the rear at ground floor level in a similar way to the house adjoining it at no. 39.

6. It is proposed to erect a flat-roofed detached outbuilding at the bottom end of the back garden where there is currently a decked area, part of which has a timber roof above. The outbuilding would provide a games room/gym and a garden storeroom, have a footprint of 45.5 sq. m and be built to a height of 2.5 m. The ground floor plan shows 3 items of gym equipment and a pool/snooker table in the games room/gym.
7. The appellant previously received a certificate (ref. 67415/APP/2018/3179) in December 2018 for a very similar development, except the footprint of the outbuilding would have been 30.1 sq. m and no internal layout was offered for the games room/gym. It became evident to the appellant that this outbuilding would not have provided sufficient space for its intended uses.
8. The main issue turns on whether the proposed outbuilding would have amounted to permitted development at the time of the application.
9. At that time, subject to various limitations, Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permitted the provision within the curtilage of a dwellinghouse of "any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...". It is common ground that the outbuilding would be within the curtilage of the dwellinghouse and that the physical limitations in paragraph E.1 of Class E, relating to such matters as height, location and the proportion of the curtilage covered, would be met by the proposed development.
10. The Council maintains in its decision notice that the proposal does not constitute permitted development as the outbuilding "... by reason of its overall size, and scale is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse." Hence, the Council considered that the relevant permitted development right would not be engaged. More specifically, the Council was concerned that as the outbuilding's footprint would exceed the footprint of the original dwelling (38 sq. m on the Council's estimate, 41 sq. m on the appellant's estimate), the outbuilding would appear excessive for use solely for purposes incidental to the enjoyment of the dwellinghouse.
11. The appellant refers to the court case of *Emin v SSE & Mid Sussex DC [1989] JPL 909*. This confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration but this was not by itself conclusive. It would be wrong to find that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building was genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. These issues are to be assessed with an element of objective reasonableness and as a matter of fact and degree.

12. On the matters of size and scale, that the footprint of the outbuilding would slightly exceed the footprint of the original dwelling is more an indicator of the compact plan of the latter than of an excessively-sized outbuilding as such. Moreover, relying on this comparison, as the Council does, misses 2 important points. Firstly, buildings are 3-dimensional structures so a more appropriate comparison would be of the volumes of the outbuilding and the dwelling. Secondly, any comparison should be with the more substantial existing dwelling as extended, since the outbuilding is being proposed for use with that and not the original dwelling. The block plan and my site visit showed that the single-storey rear extension, which is about 3 m deep, has probably added about 16 sq. m to the footprint of the original dwelling. The single-storey outbuilding would clearly be subordinate to the current 2-storey house. The only direct constraint on the size of the outbuilding is imposed by the limitation at paragraph E.1 (b) of Class E, which the Council confirmed would not be breached. I find nothing unusual about the size and scale of the outbuilding proposed relative to the size and scale of the host property and garden.
13. Having regard to the case law referred to in paragraph 11 above, it is more important to show that what is proposed, including the floor space attributed to each proposed use, is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling as such.
14. The purposes for which this outbuilding would be used would plainly fall within the wide range of incidental purposes that are permitted by Class E and they would be connected primarily with the domestic and leisure activities of the occupiers of the house.
15. The Council has not directly pointed to any particular use or activity which would be allocated an excessive amount of space on the submitted plans. The games room/gym now shows a clear and realistic layout of the intended facilities. It seems to me that each of the rooms inside the outbuilding would fulfil their intended purposes and allow for adequate circulation space and nothing more. The spaces set aside in the building would be reasonable and not excessive for a single family residing in a house of this size. The outbuilding's size would be no more than it needs to be and would be significantly less than that of the dwelling it would be associated with. This does not seem to me to be a case driven by the unrestrained whim of the appellant. It is more to do with providing recreational facilities and garden storage for this family dwelling.
16. I have noted the previous appeal decision from September 2018 and accompanying plan details relating to a rear outbuilding at 59 Central Avenue submitted at Appendix A of the appellant's statement. There are some obvious similarities concerning the footprint of that proposed outbuilding and the intended layout for the main room within it. The planning officer's Delegated Decision report contains extracts from 2 appeal decisions issued in January 2010 concerning 86 Hitherbroom Road and 81 Bourne Avenue. However, the relevant plan details which may have accompanied those 2 cases have not been supplied and insofar as I can tell the former case concerned vaguely labelled intended uses whilst the latter case simply concerned a proposed playroom. I have taken all these appeal decisions into account insofar as they are relevant to this appeal, bearing in mind that the facts in each of them do not appear to be identical to the facts in this case and that each appeal has to be determined on its own merits and facts.

17. In the light of the above and having taken into account all other matters raised, I find on the balance of probabilities that the proposed outbuilding, in the form and for the uses as proposed by the appellant, would be permitted development, being a building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR