



Appeal Decisions

Site visit made on 21 January 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2020

Appeal A Ref: APP/Y5420/X/19/3226166

105 Whittington Road, Wood Green, London N22 8YR

- 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 & Mrs D Brakiovski against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2017/2488, dated 5 August 2017, was refused by notice dated 5 September 2017.
- 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 an outbuilding.

Summary Decision: The appeal is dismissed.

Appeal B Ref: APP/Y5420/X/19/3237406

105 Whittington Road, Wood Green, London N22 8YR

- 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 & Mrs D Brakiovski against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2019/2296, dated 14 April 2019, was refused by notice dated 4 September 2019.
- The application was made under section 191(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 an outbuilding for use incidental to the enjoyment of the dwellinghouse.

Summary Decision: The appeal is dismissed.

Background and main issue

1. Appeal A relates to a proposed deep outbuilding with entrance in the centre of a side elevation leading to a gym to the front with shower room opposite the access and sauna to the rear in the rear garden of 105 Whittington Road. Subsequently, a building was constructed in the same position of a slightly smaller size with a hobby room to the front, store and shower room behind and gym to the rear. Appeal B seeks to demonstrate that the building is lawful as built.
2. The appellant suggests that both the original proposed outbuilding and subsequent building would be or are lawful by reason of the planning permission granted under Class E, Part 1, Schedule 2 of the Town and Country

Planning (General Permitted Development) (England) Order 2015 (GPDO). This enables the construction of buildings etc. incidental to the enjoyment of a dwellinghouse. I understand that, after measuring of the building, the Council do not dispute that the building would fall within the size criteria of the GPDO. I see no reason to disagree with their conclusions in this regard. Nevertheless, the Council suggest that, due to the proposed or existing use of the building, it would not be incidental to the dwellinghouse as required by the GPDO.

3. Therefore, the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded, taking account of the use of the outbuilding.

Reasons

4. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability. The evidence to support the application should be precise and unambiguous.
5. The dwelling at 105 Whittington Road is a semi-detached dwelling with a deep single storey rear extension that results in a large family home. The outbuilding as constructed comprises two rooms with additional storage room and shower room. Although shown on the plans the opposite way around, the rear room is used as a gym and contains some gym equipment within it. The front room is described as a hobby room on the plans and in other documentation. It contains a limited amount of furniture, including desk, tables and chairs. Both rooms are of a substantial size and appear to be larger than would be necessary to contain the furniture and equipment located within them.
6. I have limited information as to how the rooms are used, although I note that the gym is used during University holidays, which is only a limited part of the year. Although described as a hobby room, it is not clear what hobbies are carried on in the other large room and I note that room is described as a playroom on some of the submitted plans. On that basis, the evidence submitted is not precise and unambiguous. The limited amount of use and lack of information as to how the rooms are used indicates that the building is more than can be considered as incidental to the dwelling.
7. In comparison to the main dwelling, the scale of the outbuilding is considerable. Given its size, visually it does not appear to be ancillary or subordinate to the dwellinghouse. I conclude that, on the balance of probability, the use of the building under appeal B is not, therefore, incidental to the dwellinghouse.
8. The building proposed in appeal A would be slightly larger than that of appeal B. It would contain a gym that would be used in the same manner as that in appeal B. The sauna was shown as a substantial room, with seating for a large number of people that indicates a use greater than for the residents of the dwelling. This adds weight to my conclusion that the building would not have been incidental to the main dwelling.
9. My attention has been drawn to appeal reference APP/T5150/X/10/2139015 that related to a home gymnasium of 24 square metres, so was considerably smaller than either building in this case. For that reason, that case is not comparable to these. In any event, I need to consider the developments on their individual merits.

10. For the reasons given above I conclude that the Council's refusals to grant a certificate of lawful use or development in respect of the proposed and existing outbuilding were well-founded and that the appeals should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions

11. Appeal A is dismissed.

12. Appeal B is dismissed.

AJ Steen

INSPECTOR