
Appeal Decision

Site visit made on 17 December 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal Ref: APP/N5090/X/19/3229311

138 Clitterhouse Road, Cricklewood, London, NW2 1DN

- 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 Gerhard Ampofo against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/1872/192, dated 26 March 2019, was refused by notice dated 26 April 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 'construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has also submitted an appeal¹ in respect of the Council's refusal to grant an LDC for a proposed development described as 'the construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern half to be used as a study and games room. Southern half to be used as a garage.' That appeal is the subject of a separate decision.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. The appeal site is an end of terrace dwelling with a generous rear garden. At the end of the garden, closest to Brent Terrace, is a garage and shed. The proposed development involves the demolition of the garage and shed and the erection of a detached single storey garden building for purposes incidental to the use of the main dwellinghouse.
5. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations.

¹ APP/N5090/X/19/3233810

Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to certain conditions and limitations.

6. The Council accepts that the proposed building would comply with all the limitations set out in Class E.1 and I have no reason to conclude otherwise. However, they argue that the outbuilding would not be incidental by virtue of its scale.
7. The onus of proof is on the appellant to show, on the balance of probabilities, that what is proposed is reasonably required for a purpose incidental to the use of the dwelling as a dwelling. This is because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such. In that context the physical size of the outbuilding could be a relevant part of the consideration in that it might represent some index of the nature and scale of the activities.
8. The proposed building would be located within the curtilage and would have a footprint of 83.4sqm, which the Council states would be similar in size to that of the ground and first floors of the house. The submitted plans indicate that the internal layout would be open plan providing a study area with desk and chair, a games area, bike storage and a seating area consisting of two sofas, two chairs and a table, though as these items of furniture are not part of the building and could well change over time, I consider them illustrative rather than determinative of what would be likely if the building were constructed.
9. Having regard to case law, such a generous amount of floor space does not in itself preclude the lawfulness of an outbuilding. However, when evaluating whether the outbuilding is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. An unusually large building will not necessarily be reasonably required just because a householder says it is, and it is for the appellant to show that the building of the proposed size is reasonably required, having regard to all the circumstances.
10. The courts have confirmed that regard should be had to the use to which it is proposed to put a building and to consider the nature and scale of that use in the context of whether it is 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 is not by itself conclusive. It is 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 is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. The courts have also held that the term 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself.
11. In this case the appellant has provided little by way of explanation for the design and large size of the proposed building. He argues that the proposed uses are incidental to the dwellinghouse, that a single storey building is clearly incidental to an established three storey end of terrace family home and that

the open plan layout is intended to suit family needs which evolve over the years as interests and hobbies change.

12. The plans show the building to have an open plan layout and I recognise that an element of flexibility between the various uses and space occupied could reasonably be anticipated however, there is a large amount of space around the various uses. In particular, the seating area shown covers a large area and is not materially different in either scale or use to a lounge in a dwellinghouse and there is nothing to indicate that there is no such room in the existing dwellinghouse. The appellant's explanation for the seating area is limited to that it will enable the garden to be enjoyed on days when the weather is inclement.
13. The proposed building would also replace an existing garage and garden building however, no explanation has been offered about why bikes could not reasonably be stored in the existing buildings or why the study and games areas could not be incorporated within the house or within a building of more modest proportions.
14. On the particular facts of this case, although the activities designated on the plans fall into categories that, individually, may be incidental to the enjoyment of the dwellinghouse, the spaces intended to contain the uses seem much larger than necessary for those purposes and I am unable to conclude that the building is genuinely and reasonably required to accommodate the proposed activities. The appellant has not demonstrated that space for a study area, games area and seating area, whilst no doubt welcome by them, is reasonably required on such a scale in relation to the host dwelling. Their submission of an application for an LDC and stating a proposed use or uses does not provide a case that what is proposed is or would be reasonably required.
15. I find, that the submitted evidence does not show, on the balance of probabilities, that the proposed garden building would reasonably be required for a purpose incidental to the enjoyment of the host dwelling. The proposed development would not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Other matters

16. The appellant stated that the Council incorrectly assumed that the proposal was for a dwellinghouse. However, the evidence before me does not indicate that, and in any event, I am required and have considered the proposed development as described in the application.
17. I have noted third party representations however, the appeal is confined to the narrow remit of reviewing the Council's decision as to whether it was well-founded or not, planning merits are not relevant in this appeal. I am also unable to dismiss the appeal on the basis of what might be, notwithstanding third party submissions on this point.

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 garden building 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.

Felicity Thompson

INSPECTOR