
Appeal Decision

Site visit made on 12 February 2020

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 18th February 2020

Appeal ref: APP/R5510/X/19/3225396 55 Hitherbroom Road, Hayes UB3 3AF

- 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 by the London Borough of Hillingdon Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Gurpreet Verma.
- The application, reference 22261/APP/2019/208, dated 17 January 2019, was refused by a notice dated 18 March 2019.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness of the proposed development.
- The development for which a certificate of lawful use or development was sought was for the erection of a single storey outbuilding at the end of the rear garden to No. 55 Hitherbroom Road.

Summary of decision: A certificate of lawfulness is not issued.

Appeal property

1. The appeal concerns the proposal by the Appellant, Mr Gurpreet Verma, to build a single storey outbuilding at the end of the rear garden to his home at No. 55 Hitherbroom Road, Hayes.

Inspector's considerations

2. Article 3, Schedule 2, Part 1, Class E – buildings etc incidental to the enjoyment of a dwellinghouse set out in The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order), permits, within the curtilage of a dwellinghouse, the provision of: *any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such ...* . That concession is subject to limitations and conditions. In this case the dimensional and locational restrictions would be met. But the Council were not convinced that Mr Verma's project would meet the test of being: *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*.
3. Mr Verma's proposed 2 room outbuilding would be 9.5m wide and 5m deep. Its flat roof would be less than 2.5m high. It would provide a garden store room of some 11m² and a home gymnasium/pool room with an internal floor area of about 23m². Mr Verma said the building's proposed uses would be entirely incidental to the enjoyment of the dwelling house.

4. Purposes incidental to the enjoyment of a dwellinghouse have been held to include those connected with the running of the dwellinghouse or with domestic and leisure activities of the persons living in it. Specifically, a games room to accommodate a billiards table has been held, (in an appeal decision reported at [1987] JPL 733), to satisfy that objective. In the High Court case of *Emin v SSE* [1989] JPL 909 it was said that “the fact that such a building had to be required for a purpose associated with the enjoyment of the dwellinghouse could not rest solely on the unrestrained whim of who dwelt there. It connoted some sense of reasonableness in all the circumstances of the particular case.....the word ‘incidental’ connoted an element of subordination in land use terms.
5. In *Wallington v SSW* (1991) 62 &CR 150, the Court of Appeal held that the words “as such” in the Act must mean “of and incidental to the enjoyment of the dwellinghouse as a dwelling-house.” The mere fact that the occupier may genuinely regard the relevant activity as a hobby could not suffice to prove that the purpose was incidental to the enjoyment of the dwellinghouse as a dwellinghouse. An objective standard had to be applied in considering the relevance or otherwise of the provisions of the Order.
6. Two principles can be derived from those cases. First, that something which is ‘incidental’ cannot be a dwellinghouse nor, therefore, can it be for something for the provision of a dwellinghouse purpose, such as a bedroom or kitchen. Second, a “purpose incidental to the enjoyment of the dwellinghouse as such” is a broad concept. It is a matter of fact and degree in each case. The building must be “required” for the incidental purpose, it is a matter primarily for the occupier to demonstrate what incidental purposes he intends to enjoy.
7. The Appellant, Mr Verma, said the gymnasium in the larger of the 2 rooms was wanted to accommodate running, rowing, multifunctional weight training equipment and floor space for exercises. The application plans also showed a pool table in the larger room. The smaller room was to be used to store garden maintenance and leisure equipment.
8. The Council said the question of a building being ‘required’ for the purposes of Class E to the Order raised a concern that it could be open to abuse by sham proposals, involving buildings being built for one stated purpose and then being used for another purpose. The Council said the proposed building would be substantial, having nearly the same floor area as the original ground floor area of the semi-detached house. They said the outbuilding would be close to the London plan standard for a one bed two-person dwelling at 50m², confirming its suitability for independent occupation. They said it was difficult to see the proposed outbuilding as a minor accompaniment to the original dwelling.
9. In my view, the proportions of the proposed outbuilding appear unduly generous, particularly if compared to the size of the original house. The kind of activities intended such as a pool table and gymnasium equipment shown on the plans and as indicated by Mr Verma are uses normally incidental to the enjoyment of the dwelling house. But this would be an unusually large facility in a building that occupied the full width of the rear garden to No. 55 and having a floor area similar to that of the original house ground floor.

10. Despite the Council's concern about a possible alternative use for the proposed outbuilding, the project should be judged on its intended purpose, rather than assuming a different intent. It should be based upon its suitability for the purpose and whether that is reasonably required for that purpose. Nevertheless, the doors and windows would have a look more suited to residential occupation than a utility building. My conclusion is that the appeal building was not shown to be on a scale appropriate to that required for a purpose incidental to the enjoyment of the dwellinghouse as such at No. 55 Hitherbroom Road. As a matter of fact and degree I consider that the proposed appeal building does come not within the terms of Class E of Part 1 of the Order. Planning permission would be required to erect the building.

FORMAL DECISION

11. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the erection of a single storey outbuilding at the end of the rear garden of No. 55 Hitherbroom Road, Hayes UB3 3AF was correct and that the appeal should fail. I exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

John Whalley

INSPECTOR