
Appeal Decision

Site visit made on 18 February 2020

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 24th February 2020

Appeal Ref: APP/F5540/X/19/3231195

Land at 36 Meadow Waye, Hounslow, TW5 9EZ

- 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 lawful development certificate (LDC) by the Council of the London Borough of Hounslow dated 26 April 2019.
- The appeal is made by Mr Sukhjot Malle.
- The application ref. 00753/36/LAW1 was dated 20 March 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 lawful development certificate is sought is (proposed) detached single storey outbuilding to the rear of the house.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.

Main Issue

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

Reasons

3. The appeal site is a two storey semi-detached residential dwelling. The appeal concerns the erection of a proposed outbuilding. The application describes the proposed use as a gym with playroom with a wc and a garden store room. Drawing number 36001A submitted with the application labels the floor plan as wc, games/gym, cinema area and storage area.
4. Class E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permitted development rights for the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as

such subject to certain conditions and limitations. The issue in dispute between the parties is whether the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse. There is no argument that in all other respects Class E is satisfied and I have no reason to conclude otherwise.

5. It is established law that in considering Class E proposals the critical test to be applied is firstly (i) whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain incidental or subordinate to the main use of the property as a dwellinghouse, and secondly (ii) whether the proposed outbuilding is reasonably required in order to accommodate those uses. Size is one factor to be taken into account but is not determinative.
6. I consider that a gym, cinema room and storage area are uses that are capable of being incidental to the residential use of a main dwellinghouse. But the supporting information provided with the application and appeal provide little detail. For example, there is no information about the proposed gym equipment or its layout. The application and its supporting plans are not consistent and imprecise in their description of the proposed uses. The scale of the proposed outbuilding relative to the host property is significant but there is no justification before me as to why such a large footprint is reasonably and genuinely required.
7. The plans show a wc. The Government's Technical Guidance makes it clear that Class E does not cover normal residential uses such as separate self-contained accommodation. But that is not to say that a normal residential use, such as toilet facilities could not be regarded as ancillary to an incidental use such as a home gym. As I have concluded that a gym is capable of being incidental it follows that a wc could be ancillary.
8. The onus of proof in this appeal rests on the Appellant and the test of evidence is the balance of probabilities. The supporting information before me is not detailed nor precise. I consider that it has not been demonstrated that on the balance of probabilities the proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
9. The Appellant draws to my attention other sites but I do not know the circumstances of those cases and have determined this appeal on its own particular facts.
10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the outbuilding at 36 Meadow Waye, Hounslow, TW5 9EZ was well founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal Decision

11. The appeal is dismissed

S. Prail

Inspector