



Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

Appeal Ref: APP/W5780/X/19/3228970

41 Empress Avenue, Woodford Green, IG8 9DZ

- 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 Mrs E Taylor against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 0646/19, dated 10 February 2019, was refused by notice dated 9 May 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is proposed use of outbuilding for psychotherapy/counselling services.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs E Taylor against the Council of the London Borough of Redbridge. This application is the subject of a separate Decision.

Procedural Matters

3. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. The relevant test of the evidence is 'the balance of probability'.
4. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.
5. The use of the outbuilding is already under way, as the appellant currently receives between 5-15 clients a week. However, she is applying for the LDC on the basis of potentially expanding the practice to a maximum of 20 clients a week, which would be considered full-time under British Association for Counselling and Psychotherapy guidelines. For that reason, I have considered the use as a proposal to reflect this aspiration, rather than the use as it was at the time of the application.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

7. The Council refused the LDC application on the grounds that the outbuilding located to the rear of 41 Empress Avenue had not been in a Class D1 use for a period of ten years or more at the date of the LDC application, and so the use was unlawful. Use Class D1 is defined in the Town and Country Planning (Use Classes) Order 1987 (as amended) as non-residential institutions.
8. The outbuilding was constructed in 2014, and the appellant has not made the case that the use exceeds a period of ten years. Instead, she argues that the use of the outbuilding for a psychotherapy/counselling service does not represent a material change of use of the land. As noted above, she seeks to establish that receiving up to 20 clients per week would be lawful.
9. I note that the appellant previously applied for planning permission (ref: 3250/18) for this use of the outbuilding. The application was refused on the grounds that it introduced a commercial use into the rear garden of a dwelling in a residential location, with an adverse impact on the amenity of neighbouring occupiers and excessive levels of activity and disturbance. The refusal was not appealed.
10. The planning unit comprises the two-storey house, the land and outbuilding to the rear, and the small frontage area. Access to the outbuilding is pedestrian only along one side of the house. The clients arrive individually, and parking space is available at the front of the property for those who arrive by car.
11. Due to the nature of the business, the counselling sessions are quiet, with no need for music, or the use of any special equipment. The consultation hours are: Monday 1pm-7pm; Tuesday 1pm-7pm; Thursday 9am-4pm; and Friday 9am-4pm. No sessions are held on bank holidays or at the weekend. Outside of these hours, the family use the building for their own private leisure purposes.
12. Section 55(2)(d) of the Town and Country Planning Act 1990 (the 1990 Act) provides that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such shall not involve development of the land. A change of use may be de minimis, meaning that it is on too small a scale for the law to take account of it. However, it seems to me that a use that would amount to a full-time occupation could not be regarded as de minimis.
13. There is no statutory definition of the concept of a material change of use, and business uses are not precluded from being ancillary uses. Therefore, whether or not the psychotherapy/counselling service would amount to a material change of use requiring planning permission is a matter of fact and degree.
14. The practice appears to operate throughout the year on a permanent basis. Apart from its use by household members outside working hours, the whole outbuilding is in use by paying clients on a regular and ongoing basis. A maximum of 20 clients a week across four week days would be an average of

- five visits per working day. I am unable to agree that this number of arrivals and departures could be described as 'occasional'.
15. Instead, these visits by clients would be in addition to such activities as postal deliveries and the comings and goings of the household and their guests. Consequently, there would be a significantly greater level of activity than would normally be expected at a private dwelling. The result would be an intensification of the pattern of activity in and around the outbuilding, where the clientele would have no connection to the occupiers of the main house other than the appellant.
 16. Due to the sensitive and confidential nature of the appellant's work, it is presumably important that interaction between the clients and the appellant's household is kept to a minimum, if it happens at all. In that context, I am mindful of the judgement arising from *Croydon LBC v Gladden [1994] 1 PLR 30*, where the court held that for a use to be considered incidental to the enjoyment of a dwellinghouse and exempted from development under s55(2)(d), it must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. It seems to me that there is at least the possibility that the normal use of the rear garden might be curtailed due to the clients' need for privacy.
 17. In summary, a commercial activity providing full-time employment would operate within accommodation which is physically separate to the main dwellinghouse. The outbuilding is sizeable in proportion to the relatively modest end-of-terrace house, with a footprint of approximately 25.6sqm including the decking. It includes a toilet and shower room which give it a degree of independence from the main dwelling.
 18. Taking all the above factors into account, in my judgement, the proposal would not be incidental or ancillary to No 41, but would be a significant change to the use of the outbuilding, creating a separate planning unit.

Appeal decisions and other matters

19. The appellant quotes from a 1997 paper by Sir Iain Glidewell, which refers to the professional use of a room or two within a private dwelling. I accept that many individuals work from home in some capacity or another. However, each case is to be considered on its individual merits. Whilst there may be no encroachment on the main house by the business, the outbuilding and its approach are nonetheless intrinsic elements of the residential unit. This matter is therefore not determinative in itself.
20. The appellant refers to a number of appeal decisions in support of her case. The Milton Keynes decision (ref: APP/Y0435/X/10/2122067) related to the use of a single room in a house for tuition. From the information before me, the room did not achieve the degree of self-containment of the outbuilding at No 41. Furthermore, tuition did not take place all year round. Instead, it was confined to term times, and gaps in bookings also arose from factors such as illness and exam periods. These details alone lead me to the conclusion that the circumstances of that case differ significantly to the appeal case.
21. The Inspector in the Lincoln decision (ref: APP/N2535/C/10/2141442) agreed with the main parties that the minding of up to six children at a time would not

involve a material change of use when assessed in the context of that individual planning unit. In the absence of the full details of the nature of that planning unit, I am unable to be certain that this case offers a direct parallel to the one before me.

22. In the appeal decision in Orpington (ref: APP/G5180/C/10/2142478), the Inspector found that the operation of a cat rescue/rehoming facility was akin to a hobby and so was ancillary to the main residential use. By contrast, the running of a full-time business is evidently not akin to a hobby, which limits the weight I can give this decision.
23. I agree that the proposal does not fall to be assessed against Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as the outbuilding already exists.
24. I have been provided with representations of support from neighbouring residents, and also the response of the Council's Highways Team raising no objection to the previous planning application on highways grounds. However, this evidence speaks to the planning merits of the case. As noted above, this appeal turns on matters of law, and so I am unable to take these representations into account in my consideration.

Conclusion

25. In summation, I am satisfied on the available evidence that the use of the outbuilding for psychotherapy/counselling services would be a material change of use of the building falling within Use Class D1, involving development that requires planning permission. I am not persuaded on the balance of probabilities that the extent of activity proposed would, as a matter of fact and degree, be merely incidental or ancillary to the residential use of the main dwelling house.
26. For the reasons above, I conclude that the Council's decision to refuse to issue an LDC for the use of the outbuilding for psychotherapy/counselling services was well-founded, albeit not for the reason given in their decision notice. As a result, the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR