
Appeal Decision

by Elizabeth Jones Bsc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2020

Appeal Ref: APP/R5510/X/19/3241948
216 Coldharbour Lane, Hayes UB3 3HQ

- 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 Baljeet Malhi against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 2077/APP/2019/1147, dated 2 April 2019, was refused by notice dated 29 May 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 the erection of outbuilding to provide gym/playroom.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
3. The appellant has made a separate appeal at the adjacent property¹ and I am the appointed Inspector in this other case. For the avoidance of doubt, I will determine each appeal strictly on its own individual merits.

Main Issue

4. An LDC is not a planning permission. Thus, the planning merits of the outbuilding (including whether there is an impact on the living conditions of neighbouring residents and the remaining garden space) are not relevant in this appeal. My decision rests on the facts of the case, relevant planning law and judicial authority. The main issue, therefore, is whether the Council's decision to refuse to grant an LDC was well-founded.

¹ APP/R5510/X/19/3241946.

Reasons

5. Amongst other things, Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building.... required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development.
6. There is no dispute that the proposed outbuilding would be in the rear garden of the residential curtilage of the dwellinghouse.
7. The Council's refusal reason states "...the proposed outbuilding, in conjunction with the existing outbuilding, by reason of its cumulative size and scale is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse."
8. There already exists a detached outbuilding within the garden area. The existence of another outbuilding is covered by Paragraph E.1 (b) which states that "the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)." There is no disagreement that the proposed outbuilding meets all the requirements of paragraphs E.1 of Class E of the GPDO including E.1 (b). Moreover, there is nothing in Class E of the GPDO which states that the collective footprint of outbuildings must not exceed the footprint of the original dwellinghouse. Thus, the collective footprint of the existing outbuilding and proposed outbuilding (albeit larger than the footprint of the dwellinghouse) does not mean that the proposed outbuilding is excessive and not incidental.
9. The size of the proposed outbuilding would be approximately 39m². When considered on its own, the Council is of the view, that the size and scale of the proposed outbuilding is commensurate to the size of the dwellinghouse. Whilst size is an important consideration, it is not in itself conclusive. Therefore, the matter to be determined is whether the outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
10. In this case the appellant states that the proposed outbuilding is required for a gym/ playroom and storage. No details have been provided to explain why such facilities are required in connection with this particular dwellinghouse.
11. In LDC cases the burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. In this particular case, apart from indicating that the outbuilding is not big enough to be used as a separate dwelling and will be used as a gym/playroom/storage and will not have plumbing or waste facilities for the provision of a kitchen or toilet, no further information/details have been provided. As a result, I cannot be satisfied that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
12. Consequently, on the evidence available to me and having regard to all other matters raised, I find that, as a matter of fact and degree, it has not been shown that on the balance of probabilities the proposed outbuilding would be permitted development falling within Class E of the GPDO. There is nothing else to show that the proposed outbuilding would be lawful.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect to the erection of an outbuilding 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.

Elizabeth Jones

INSPECTOR