



Appeal Decision

by Elizabeth Jones Bsc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 June 2020

Appeal Ref: APP/V1505/X/19/3235799

226 Noak Hill Road, Great Burstead, Billericay CM12 9UX

- 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 Chris Foster against the decision of Basildon District Council.
 - The application Ref 19/00649/LDC, dated 25 April 2019, was refused by notice dated 18 June 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 erection of outbuilding within domestic curtilage.
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Decision

1. The appeal is dismissed.

Procedural Matter

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.

Main Issue

3. Planning merits are not relevant in this appeal. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The main issue, therefore, is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. Amongst other things, Class E of Part 1 of Schedule 2 of the 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 (PD).
5. For an outbuilding to be PD under Class E it must be used and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse – and not be for a primary residential use. Incidental connotes an element of

subordination in land use terms in relation to the enjoyment of the dwellinghouse. There is no dispute that the proposed outbuilding would be within the curtilage of the dwellinghouse and that it would meet all the requirements of paragraph E.1 of Class E of the GPDO. I therefore need to consider whether, in this particular case, it has been shown that the proposed outbuilding is reasonably required for the purposes incidental to the enjoyment of the dwellinghouse.

6. The Council's view is that due to its size, the outbuilding cannot be considered incidental and also, due to the inadequate width of the access the outbuilding could not be used for the storage of vehicles.
7. The drawings submitted with the application show an outbuilding with an approximate floor area of 158.4m² comprising car storage for two classic cars, a gym/dance studio, shower, sauna and changing facilities. There is no dispute that car storage, a gym/dance studio, sauna room and shower room are uses which could be considered as incidental to the enjoyment of the dwellinghouse.
8. My attention has been drawn to case law¹ which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse." It goes on to say that "the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse." Moreover, it is established that the term 'incidental to the enjoyment of the dwellinghouse' "cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case."
9. The Council submits that the footprint of the proposed outbuilding would not be subordinate to the footprint of the main dwellinghouse. Albeit the outbuilding would be deeper and wider than the main dwellinghouse, it would be single storey in contrast to the two-storey nature of the main dwellinghouse. I consider that the outbuilding would appear subordinate in scale and would not result in an unbalanced relationship between the main dwellinghouse and the proposed outbuilding.
10. In addition, the proposed outbuilding is not an unreasonable size to accommodate car storage, a gym/dance studio, sauna room and shower room. Moreover, having regard to the appellant's submitted evidence which includes a ground floor plan² of the outbuilding, I consider that the room sizes of the car storage area and gym/dance studio whilst generous are not unduly excessive given their proposed uses. Having regard to the evidence submitted, they are not proposed to be primary living accommodation such as bedrooms, bathrooms or kitchens thus their provision would not be unreasonable as additional facilities for a family to enjoy. A shower, room whilst it could be regarded as primary living accommodation, in this case would be an ancillary function to the gym/dance studio and sauna and its provision would not be unreasonable.

¹ Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909

² Drawing Number REVO/4060 Rev A.

11. Notwithstanding the above, the Council has expressed concerns that vehicles would not be able to manoeuvre to the rear of the appeal site due to the narrow width of the access. The submitted drawing indicates that the existing garage is to be demolished to allow access to the proposed outbuilding. However, albeit the design of the outbuilding with its two double doors would afford independent access into the building for two vehicles, the appellant's submissions do not sufficiently demonstrate that even with the existing garage removed, the access route is adequate for vehicles to manoeuvre past the house to gain access to the proposed outbuilding. Therefore, I cannot be satisfied that the outbuilding would be used for classic car storage as proposed.
12. In LDC cases the burden of proof rests with the appellant and the appropriate test is the balance of probabilities. In this particular case, I cannot be satisfied that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
13. 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 on the balance of probabilities that the proposed outbuilding would be permitted development falling within Class E of the GPDO.

Conclusion

14. 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 an outbuilding within the domestic curtilage 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.

Elizabeth Jones

INSPECTOR