



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/R5510/X/19/3232789

17 Woodgate Crescent, Northwood, HA6 3RB

- 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 & Mrs Shah against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref: 42270/APP2019/702, dated 28 February 2019, was refused by notice dated 20 May 2019.
 - The application was made under section 191(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 described as "Demolition of 3 outbuildings and replacement by two outbuildings. Outbuilding 1 has a WC and shower and will be used as a Yoga Room and Gym. Outbuilding 2 is for use as an ancillary kitchen and storage for occasional use and a hobby room. Both outbuildings are for purposes incidental to the main dwelling. Both outbuildings are to the rear of the property and well behind the principal elevation".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Planning Inspectorate initially arranged for this appeal to be determined following a site visit. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans, photographs and documentary evidence to understand the nature of the site, the grounds of appeal and the point in dispute. The parties were contacted about this and no objections were raised to the appeal proceeding without a site visit.

Main Issue

3. S191(1) of the 1990 Act outlines that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful or (b) any operations which have been carried on land are lawful, they may make an application for the purpose to the local planning authority (LPA). This appeal relates to such an application and it seeks to establish the lawfulness of, in short, the erection and use of two buildings that have already been erected in the back garden of

the host property. It is not an application for planning permission. As a legal determination, there is no place to consider the planning merits of the development carried out under s38(6) of the 1990 Act and whether it accords with the prevailing development plan. Government policy contained within the National Planning Policy Framework, as referred to by the appellant, is also irrelevant. Moreover, if the appeal was successful, leading me to grant a Lawful Development Certificate (LDC), there is no place to impose any planning conditions or seek a planning obligation to control the uses of the building. The buildings and their uses are lawful, or they are not.

4. The Council's first reason for refusing the LDC was based on the view that the buildings had not existed for at least four years prior to the date of the application. However, the application was clearly made claiming that the buildings had planning permission granted by the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) and the appellants evidence is based on that view. Furthermore, the appellants evidence states that the works of demolition and replacement was in and around August 2018, which is less than four years anyway.
5. Turning to the Council's second reason for refusal, Schedule 2, Part 1, Class E of the GPDO grants planning permission for the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. The context for making such a judgement is whether the activity is one that is, as a matter of fact and degree, reasonably required of the primary residential use. That, therefore, is one of the main issues.
6. There is also concern expressed by local objectors that outbuilding 1 does not comply with the limitations set out in E.1 of the GPDO. Although the Council did not raise such a concern, it is evidence before me that has been seen by the appeal parties and they have had the opportunity to comment on it. I consider that this evidence should be considered, and it is a second main issue which I shall examine accordingly below.
7. The burden to make out the case, that such a development would be lawful, rests with the appellant.

Reasons

8. The Ministry of Housing, Communities and Local Government "Permitted Development Rights for Householders" Technical Guidance explains the rules on permitted development for householders and how they should be applied in particular sets of circumstances. For Class E buildings the Guidance clearly states that "*A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen*".
9. In this case, outbuilding 2 has a kitchen in it. Although the building may be mainly used for other purposes such as for storage and hobbies, including as an art room, the 'As built' floorplan for the building shows a kitchen arrangement in one half of the room and in the other half is depicted a dining table and chairs. Whilst, having regard to Mr Shah's affidavit, no food is consumed in the building, it does appear that a significant part of the space is set out for kitchen purposes.

10. I acknowledge that the kitchen may only be used occasionally to cook vegetarian meals for guests in order to avoid cross-contamination with cooking non-vegetarian food for strict cultural and religious reasons. However, despite the appellants claims to the contrary, there is no substantive evidence to support the view that an entirely separate kitchen in a detached building is reasonably required for that reason. In my view, there must be many households and/or commercial premises that successfully prepare different foods in the same kitchen without ingredients or traces of food being transferred.
11. Also, in this case the host property is substantial. The submitted estate agent details describe the kitchen/breakfast area as being well proportioned suitable to include a six/eight seated table with an excellent range of units, off which leads a substantial family room. Along with the ample space in other large ground floor rooms such as a separate dining room and lounge, it seems to me that the house could accommodate the need for separate food preparation. The extent of the kitchen facilities in the outbuilding for only occasional use has not, as a matter of fact and degree, been demonstrated to be reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
12. Turning to outbuilding 1, it maybe that a reasonable space is required to practice yoga and calisthenics by family members and friends. I also note reference to other forms of exercise and meditation. However, it is stated that the use by friends would only be occasional and there is nothing to show why the as built plan appears to show 7 spaces for floor exercise. Given the number of very amply sized rooms in the house, which includes five bedrooms and several bath/shower rooms, it has not in my view been demonstrated that the facilities provided are reasonably required to be incidental to the enjoyment of the main house.
13. Also, whilst the Council did not refuse the application because of any breach of the limitations under E.1 of the GPDO, there is significant evidence that outbuilding 1 comes within 2m of the boundary of the curtilage of the dwellinghouse and that it is higher than the 2.5m permitted for a building so located. I agree with the appellant that boundary disputes are civil matters, but in this case the location of an outbuilding claimed to have been erected under Class E is relevant to the determination of whether planning permission for it has been granted by the GPDO.
14. The appellants have not provided other evidence that they say disputes the information supplied by the neighbour which includes a detailed site survey plan prepared by a chartered surveyor showing the building infringing over the neighbour's boundary. Based on the information I have, as a matter of fact and degree, it appears that the outbuilding does not comply with limitation E.1(e)(ii) of the GPDO. As such it does not have planning permission. However, even if I am wrong about this, the development would not have planning permission for the reasons already given above.
15. I have noted the other appeal decisions referred to by the appellant. However, the outcome of any appeal depends on the individual evidence and circumstances relevant in each case. I also do not have the detailed evidence available to the other Inspectors. Furthermore, each of the other developments were for a variety of different buildings and uses. I, therefore, attach only little weight to the other appeal decisions. I accept that related to

the overall size of the house and its curtilage the two buildings are not unreasonably large, but that does not persuade me from my findings above.

16. I also note that the appellants sought the views of officers from the Council before undertaking any works. Nevertheless, that is a matter between the Council and the appellants away from this appeal. I have considered all other matters raised, but none outweigh my earlier findings.
17. For the reasons given above I cannot conclude that, as a matter of fact and degree, the development applied for is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. Consequently, the Council's refusal to grant a certificate of lawful use or development in respect of the development described in the banner heading above was well-founded. Therefore, the appeal fails and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR