



Appeal Decision

Site visit made on 26 March 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 April 2019

Appeal Ref: APP/G5180/X/18/3204181

404 Blandford Road, Beckenham, Kent BR3 4NN

- 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 Ricki Sage against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/18/00631/ELUD, dated 24 February 2018, was refused by notice dated 11 April 2018.
 - 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 was described on the application form as "*D2 Assembly and Leisure (use of a timber outbuilding as a one to-one personal training studio)*".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant's statement makes it clear that an LDC is sought in respect of the use applied for on the basis that no material change of use has occurred to a use falling within Class D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended). I have determined the appeal accordingly.

Main Issue

3. The main issue in this appeal is whether the appellant has shown that use of a residential outbuilding as a one-to-one personal training studio is ancillary to the residential use of the dwelling and has not amounted to a material change of use requiring planning permission.

Reasons

4. The outbuilding in this appeal is a substantial timber structure located towards the end of the back garden of a semi-detached property. A shared railway /tram line runs adjacent to the back garden. The property is situated part way along a lengthy residential street consisting of similar housing arranged in a fairly tight-knit manner.
5. When I visited, the main part of the outbuilding contained exercise equipment including a treadmill, a cross-training machine, a range of weights, balls and a bench. A smaller separate part of the outbuilding contained domestic items including bikes, a ladder, tools and gardening equipment. The outbuilding can

be accessed via a gated pedestrian passageway at the side of the property. An area at the front of the property is hardsurfaced and of a size capable of accommodating one car.

6. The onus is on the appellant to show that an LDC should be issued in respect of the use applied for, the relevant test of the evidence being on the balance of probability. As the planning merits are not relevant to determining whether an LDC should be issued, I am unable to take the views of interested local residents on such matters into account.
7. Both main parties agreed that the lawful use of the property was as a dwelling and I have not found any reason to suggest otherwise. I understand that the interior of the dwelling is unaffected by use of the outbuilding as a personal training studio. However, the relevant planning unit for the purposes of establishing whether a material change of use has occurred is the dwellinghouse and its curtilage, as that is the unit of occupation.
8. I am mindful of the Planning Practice Guidance (PPG), which advises that planning permission will not normally be required to run a business from home, provided it does not result in a material change of use of a property so that it is no longer a single dwelling house. The PPG advises that issues which might be relevant in deciding whether planning permission is required can include whether home working or a business leads to notable increases in traffic, disturbance to neighbours or abnormal noise¹.
9. During my visit, I observed that the levels of passing vehicular and pedestrian traffic on the street were relatively light, although I also appreciate that traffic levels might be higher at some other times of day. Noise and disturbance in the locality largely came from passing rail and tram services, as well as overflying aircraft. Whilst the rail and tram services are frequent from early morning to late evening, the associated noise generally occurred for short periods of time as did the aircraft noise. Commercial uses at the west end of the street and along the busy A214 Elmers End Road were at an appreciable distance from the property, as was Birkbeck rail/tram station. Whilst there was almost continuous vehicle parking along both sides of the street, parking nearer to the property was not obviously associated with any commercial uses. Therefore, my overall impression was that the property occupied a reasonably quiet, predominantly residential setting.
10. I am given to understand that up to eight people can visit the property on weekdays to attend the studio use. Up to four people can visit on Saturdays to attend the studio use with up to two visiting on Sundays. According to the appellant's submitted survey around 60% of the visitors arrive by car, so many of them are likely to use the parking space at the front of the property when it is available.
11. The studio use entails regular pedestrian and vehicular comings and goings to the property throughout the day, on some weekdays from as early as 0600 in the morning, up to 2030 in the evening. The Council supplied information which suggested that previously the studio use operated between 0500 and 2130 on most weekdays. The studio use might have only increased the overall level of vehicular traffic on the street by a modest amount. Even so, due to the number of visitors accessing the property, whether by car, bike or on foot, the

¹ Paragraph: 014 Reference ID: 13-014-20140306.

studio use is likely to have resulted in a substantial increase in the number and frequency of daily comings and goings. Given the residential setting, this is likely to have caused a noticeable increase in general noise and disturbance in and around the property. Consequently, having regard to the number, frequency and duration of the training sessions the studio use is materially different in character to use as a home gym by occupiers of the dwelling and it has appreciably changed the manner in which the property is being used. Whilst reference was made to traffic associated with other home-based businesses, no details were provided and, in any event, I must consider the individual facts of the use applied for.

12. I am given to understand that the studio use involves no external activities. A submitted noise survey indicated that noise levels from the outbuilding during the personal training sessions fell considerably below local average background noise levels for various times of day, including in the early morning and later in the evening, even in the case of one activity when the outbuilding doors were left open. During my visit, I observed that noise from activity and music in the outbuilding was barely audible in the garden of the property. The appellant has taken steps to minimise noise and I understand that the studio is currently used in the early morning and later in the evening on three days a week. Be that as it may, these factors do not address the significant increase in general noise and disturbance due to the number of daily comings and goings to the property associated with the studio use.
13. Therefore, the appellant has not shown that the studio use did not amount to a material change of use of the property requiring planning permission. Indeed, based on the available evidence I find that the studio use has brought about a material change in character which has, as a matter of fact and degree and on the balance of probability, resulted in a material change in the use of the property to a mixed use as a dwelling and a personal training studio.

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 use of a timber outbuilding as a one-to-one personal training studio 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.

Stephen Hawkins

INSPECTOR