



Appeal Decision

by Thomas Shields DipURP MA MRTPI

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

Decision date: 25 August 2020

Appeal Ref: APP/T5150/X/19/3243514

58 Mount Stewart Avenue, Harrow, HA3 0JU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr R Halai against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/2822, dated 8 August 2019, was refused by notice dated 27 September 2019.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is a proposed outbuilding in rear garden of dwellinghouse.
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Decision

1. The appeal is dismissed.

Procedural matter

2. This appeal is a determination of whether planning permission is required for the proposed outbuilding. Given that the outbuilding does not yet exist, and having regard to the detailed plans and appeal submissions from both parties, I am satisfied that a decision can be reached without the need for a site visit. I have therefore determined the appeal on this basis, made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

3. The main issue in the appeal is whether the Council's decision not to issue an LDC was well founded.
4. This turns on whether the proposed outbuilding benefits from planning permission ("permitted development") by virtue of Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (hereafter "the Order").

Reasons

5. Subject to a number of size and other limitations Class E(a), Part 1, Schedule 2 of the Order includes the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of that dwellinghouse as such. There is no disagreement between the parties that the limitations (E.1 to E.3) to Class E(a) are satisfied, and I have no reason to

- come to a different conclusion. As such, the single point of dispute between the parties, and upon which the main issue turns, is whether the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse.
6. The Council refers to its Development Plan policies and planning guidance. However, these are relevant as to whether they should grant planning permission in circumstances where an application for planning permission has been made to them. They are not relevant to this appeal which is concerned solely with the question of whether the proposed outbuilding would be permitted development within Class E.
 7. The parties have referred to outbuildings and planning decisions at other properties. However, while there may be some similarities with this appeal the developments, circumstances, and other physical factors in those cases are not the same as the appeal before me. Each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I take here.
 8. In order for a LDC to be granted under s192 the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful.
 9. The proposed outbuilding, as shown on the application plans¹, would be located in the rear garden at the end furthest from the house, infilling most of the garden's width and approximately measuring externally 9.5m width x 5.6m depth, with a flat roof height at 2.5m. The internal floor area would be slightly less than the 54m² indicated on the plans. Internally the outbuilding would be subdivided into two rooms, the larger one indicated as "gym area", the other as "storage".
 10. *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 is a judgement which is directly relevant to this appeal. It established that the term "incidental" was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration although not conclusive by itself.
 11. The critical test to be applied is firstly whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary or subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuilding is "reasonably required" in order to accommodate those uses.
 12. The Council's undisputed evidence confirms that the floorspace would be approximately 60% of the footprint of the original dwellinghouse. As such, I consider the building in relative terms would be of a substantial size, although this is not determinative by itself.

¹ OUT-01, location plan

13. Although some gym equipment is shown on the proposed plan, it appears to be illustrative. There is no detailed list of the type and amount of equipment to be installed, or how many people at the property would be using the facilities either individually or together, and no detail as to what is proposed to be stored in the smaller room is specified.
14. I acknowledge that the provision of an outbuilding as a gymnasium and for domestic storage is capable of being ordinarily incidental to the enjoyment of a dwellinghouse. However, in terms of the proposed outbuilding's scale and uses there is very little convincing evidence before me to justify that a building of this size is genuinely and reasonably required for incidental purposes.

Conclusion

15. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the proposed erection of an outbuilding in the rear garden of the dwellinghouse, was well-founded and that the appeal should fail. I will exercise accordingly, my powers transferred to me in section 195(3) of the 1990 Act as amended.

Thomas Shields

INSPECTOR