



Appeal Decision

Site visit made on 27 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal Ref: APP/G5750/X/19/3238377

232 High Street South, East Ham, London E6 3RT

- 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 Agha Shamsheer-Ud-Din Khan against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/02474/CLP, dated 6 August 2019, was refused by notice dated 17 September 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 a rear outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

3. There is no dispute between the parties that the proposed building would meet the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The Council's reason for refusal was on the grounds that the building, by virtue of its excessive size, in relation to the footprints of both the existing dwelling and the dwellings surrounding it, is considered to fall outside of the scope of being merely incidental to the dwelling.
4. It is a requirement of paragraph E.(a), Class E of the GPDO that the proposed development should be "required for a purpose incidental to the enjoyment of the dwellinghouse as such". It is well-established in case law that the word "required" should be interpreted as genuinely and reasonably required or necessary in order to accommodate the proposed use or activity. The burden of proof in such matters is upon the appellant to show that the proposal is genuinely and reasonably required.
5. The proposed building would be approximately 30sqm, which would be approximately 55% of the floor area of the dwelling. The appellant confirms

that the building would be utilised for leisure/exercising/gym. The drawings submitted with the application indicate a large, open gym room and a shower room with toilet and wash basin.

6. The appellant argues that the building would provide a leisure/exercising/gym facility within his reach which would assist with his health problems. I acknowledge the evidence submitted confirming the appellant's medical condition. However, this does not advocate the construction of a home gym, particularly one as large as the proposed. There is no evidence before me of what exercise equipment/exercises would necessitate the proposed building to help with the appellant's condition. Whilst a floor exercise is included in the medical documents submitted, I do not consider that the proposal is genuinely and reasonably required to carry out this exercise as it seems to me that it could be carried out in any room large enough for one to lie down on the floor.
7. Therefore, whilst the use of the building as a gym would be incidental to the enjoyment of the dwelling, it has not been demonstrated that its size is genuinely and reasonably required for its intended use.
8. Taking the above into account, having regard to the proposed use of the building and its size, I find on the balance of probabilities that the proposed building would not be used incidentally to the enjoyment of the dwellinghouse, and therefore would not satisfy paragraph E.(a), Class E of the GPDO.

Conclusion

9. 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 a rear 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.

Alexander Walker

INSPECTOR