



Appeal Decision

Site visit made on 29 July 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/N5090/X/19/3243779

1 Halliwick Road, London N10 1AA

- 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 Ben Ridley against the decision of London Borough of Barnet.
 - The application Ref 19/4721/192 dated 28 August 2019 was refused by notice dated 21 October 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 described on the application form as follows: 'Erection of a single storey garden room to rear boundary of garden. 5m deep, 2.4m eaves height with flat roof, full width of plot. Area equal to approximately 20% of original rear garden¹.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant has stated that the refusal notice issued by the Council dated the 21 October 2019 does not meet the requirements of Article 39(13) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order). Article 39(13) of the Order states that where an application is refused "the notice of decision must state clearly and precisely the authority's full reasons for the decision." However, the appellant adds that he obtained a copy of the Council's delegated report which appears to explain the reason for the Council's decision.
3. The reason for refusal was that the outbuilding would not constitute permitted development under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) and would require planning permission. Whilst the decision does not set out which conditions and limitations to Class E of the development were met, it was still specific enough to guide the appellant and enable me to determine the appeal.

¹ There is no power under Section 192 of the Act for the Council or an Inspector to change the description of development from the description set out in the application form.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.

Reasons

5. In any application for an LDC, the onus is on the applicant to show, on the balance of probabilities, that the proposed development would have been lawful at the time of the application.
6. Class E of Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to a number of conditions and limitations. The parties agree that none of the conditions and limitations to which Class E is subject would be breached by the proposal, and I see no reason to disagree. However, the Council does not consider that the proposal, given its size and proposed uses, would be required for a purpose incidental to the enjoyment of the dwellinghouse.
7. 1 Halliwick Road is an end of terrace dwelling on a wedged shaped plot with the dwellinghouse fronting the road at the narrowest part of the site. The proposed outbuilding would be positioned in the garden along the rear boundary. Drawing Number GA001 Revision C (the plan) shows that the L-shaped outbuilding would consist of one open plan space with three areas consisting of an office, an architectural model making workshop and a family garden room. The Council is concerned about the size of the outbuilding, the lack of division of space and questions the unusually large size of the workspace. The appellant states that a building of the size proposed is necessary to satisfy these various requirements and would not be unreasonably large or disproportionate.
8. With regard to dimensions, the outbuilding although single storey would fill the width of the rear boundary and would extend along the side boundary with the adjoining dwelling for approximately 9.5 metres and for around 5.2 metres along the other side boundary. The Council states that the outbuilding has a footprint of around 143sqm although the appellant relies upon a floor area figures of 123 sqm. Nonetheless, the building would have a generous amount of floor space and extend along the full length of the rear boundary. Having visited the site, I do not disagree with the Council's view that the outbuilding would be large and size is a relevant consideration when assessing the incidental nature of the use.
9. The appellant has calculated the percentage comparisons with regard to the of the outbuilding and the dwelling and calculates the outbuilding to be about 65% of the floor area of the dwelling by including the additional space created recently as a result of building work at the dwelling. LDC/19/3183/192 was granted on the 18 July 2019 for "Ground floor rear and side extension, Roof extension including an L shaped rear dormer window and 1 rooflight to front roofslope. Demolition of existing garage and new front garden landscaping." The application for the LDC was made shortly afterwards on the 28 August. At the time of my site visit, work was ongoing on site with scaffolding from ground

floor to dormer level. With regard to size comparisons between the dwelling and the outbuilding, the appellant considers that the Council's figure of 78.6sqm for the internal floor area of the dwelling relates to only the ground floor of the 5 bedroomed house. He instead refers to a total internal floor area of around 136 sqm before the recent work and around 187 sqm after the work.

10. Using the appellant's figures, it would appear that the outbuilding would exceed the 65% of the floor area of the dwelling calculated by the appellant if the recent extensions were discounted. However, inclusion of the recent extensions would also be likely to provide more useable space in the dwelling itself. Nevertheless, even if I accepted the appellant's percentage calculation of 65%, a percentage comparison is not conclusive in assessing size.
11. The case of *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 (the Emin case) established that whilst the size of the building may be an important consideration when determining if a building is to be used as incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive. It was further held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwelling house itself." Therefore, the proposed use of the proposal has to be considered.
12. The plan shows a large space with an office, a workshop and a garden room taking up the bulk of the space with much smaller areas for an architectural library, materials store and storage. The workshop contains machinery to be used in connection with the architectural model making namely a laser cutter, 3 D printer and a CNC cutter. The appellant has an architectural practice elsewhere. Whilst the planning merits are not matters for my consideration due to the nature of the appeal, neighbours have commented that the outbuilding would include a commercial workshop with heavy, noisy machinery which the appellant disputes. Nevertheless, the Council states that office space would be around 26sqm and the workshop at 50sqm and the appellant has not provided any details of occupiers or their needs. Further, there is no evidence to show how the space would be used with a workshop with machinery, the family garden room and an office in one large open space.
13. The appellant considers that the Council has failed to take account of established case law and refers to the Emin case. The appellant states that the Court held that Inspector in Emin was wrong to conclude that a proposed building could not be said to be reasonably incidental to the enjoyment of the dwelling house because it provided more accommodation for secondary activities than the dwelling provided for primary activities. The appellant is of the view that the Council has made the same error here. However, the appellant also refers to the extract of the delegated report which states "the applicant has given little by way of explanation of the unusually large size of the proposed building" and refers specifically to the workspace. The Council has therefore looked at size and use in reaching a view as to whether or not the proposed uses would be required for a purpose incidental to the enjoyment of the dwellinghouse. The appellant has stated that the outbuilding would not be unreasonably large and is necessary to satisfy various requirements but has provided limited details in that regard. Both size and uses are relevant considerations for Class E and irrespective of the size of the building, an assessment of reasonableness would still apply to the uses.

14. An extract from the Encyclopaedia of Planning Law (the Encyclopaedia) Paragraph 3B-1042.25 has been provided by the appellant which states “*a purpose incidental to the enjoyment of the dwellinghouse as such is a broad concept. Although the building must be required for the incidental purpose, it is a matter primarily for the occupier to determine what incidental purposes he proposes*”
15. Nevertheless, the same paragraph in the Encyclopaedia further states that “*Whilst the test is whether the building is reasonably required for a purpose incidental to the enjoyment of a particular dwellinghouse (as opposed to dwellinghouses in general) the test must retain an element of objective reasonableness.*” It is therefore appropriate to examine the reasons for development being ‘required’ under Class E as some degree of objective assessment is needed, and the appellant must submit sufficient evidence to support reaching such a conclusion. The evidence presented does not show who occupies the dwelling and how they would utilise the outbuilding. Moreover, there is no explanation as to why such an outbuilding of the size proposed would be required for the occupiers of the main dwelling.
16. In LDC cases, the burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. Given the scale of the outbuilding, it is difficult to come to a firm conclusion that the outbuilding is reasonably required in order to accommodate the proposed uses or activity due to lack of detailed evidence. I consider that, as a matter of fact and degree, it has not been shown that the proposed outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. As such, it would not be permitted development falling within Class E of the GPDO.

Other Matters

17. Both parties have referred to appeal decisions relating to 138 Clitterhouse Road which also related to proposed garden outbuildings. Two decisions were issued on the 11 February 2020 ² and the Council seeks to rely upon the refusal and the appellant relies upon the grant. I have been provided with a copy of the refusal decision by the Council and the appellant has provided an extract of the grant which is paragraph 7 of the decision letter.
18. Each appeal relies on the particular evidence and circumstances that are before the Inspector and other decisions are rarely directly comparable to any other proposal. I have to determine this appeal on its own merits. The appellant has referred to paragraph 7 to demonstrate a percentage comparison between the Clitterhouse grant and this appeal although footprint figures are used in the Clitterhouse grant rather than floorspace. Nevertheless, a percentage comparison is not in itself conclusive particularly where there is no percentage threshold contained in the relevant wording. Paragraph 7 also sets out the details of the uses including garage use which are not necessarily comparable to the appeal before me.
19. The appellant has referred to Class E authorising a wide range of buildings in terms of size, form and usage including swimming pools of 150 sqm, large stables and aviaries. Whilst that may be the case, each proposal will have been the subject of its own assessment and any relevant conditions and limitations.

² APP/N5090/X/19/3233810 and APP/N5090/X/19/3229311

Conclusion

20. 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 proposed 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.

E. Griffin

INSPECTOR