



Appeal Decision

Site visit made on 25 August 2020

by C Sherratt DipURP MRTPI

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

Decision date: 19 October 2020

Appeal Ref: APP/M5450/X/19/3239016

76 Birchmead Avenue, Pinner, HA5 2BH

- 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 Mark Reeves against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3244/19, dated 22 July 2019, was refused by notice dated 16 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 outbuilding at rear for use as gym / leisure.
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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 issue a certificate of lawfulness is well founded.

Reasons

3. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO) permits any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure, subject to certain conditions and limitations.
4. There is no dispute that the various conditions and limitations would be met. However, the Council is of the view that the building is not considered to be for a purpose incidental to the enjoyment of the dwelling as the outbuilding would be a significant structure in the rear garden of the main dwellinghouse on the site. It would enjoy a similar footprint to the original dwellinghouse. The Council calculate that the footprint of the original dwelling is some 79 metres square (without taking into account the approved extensions).
5. The proposed floor layout plans indicate that the building, some 9m x 9m, would house a bar, TV cinema area, gym and shower room. An existing double garage would be demolished. The internal space would remain open plan other than the shower room. In support of the application for a

certificate, the appellant explains that the proposed gym area accommodates a weights bench, rowing machine and spinning bicycle. He had hoped to also incorporate his vibro-station and running machine, but these will now be positioned in the secondary gym in the main house so that the outbuilding can double up as a cinema room with a bar. The proposed outbuilding will provide adequate daily gym facilities for the appellant and his family to maintain physical wellbeing in the privacy of their own home, addressing health issues that necessitate daily gym activities. The appellant explains that the existing double garage was considered for conversion to a gym, but its position restricted the provision of further off-street parking which is also required to accommodate the family's four vehicles.

6. An appeal decision has also been drawn to my attention¹ which addresses some of the case law relevant to the issue. In the Emin judgement, the Court held that, in order to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. It was therefore necessary to ensure that it is incidental or conducive to the very condition of living in the dwellinghouse. In that context, the physical size of the building could be a relevant consideration, in that it might represent some index of the nature and scale of the activities. The Court held that the use of a building cannot rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. The word "incidental" implies an element of subordination, in land use terms, in relation to the enjoyment of the dwellinghouse itself.
7. The Court endorsed the general approach adopted by the Secretary of State in that appeal and agreed that the test to be applied was whether the uses of the proposed buildings, when considered in the context of the "planning unit", are intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse. It was correct to consider the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse.
8. Whilst the building is much smaller than that allowed in the appeal decision, I note that in that case the building was intended to house, amongst other associated facilities, a swimming pool. This, by its very nature, commands a building of a sizeable footprint. In addition, it would accommodate some 10% of the net area of the curtilage, replace some existing ancillary buildings and have a footprint equivalent to around 54 – 77% of the host dwellinghouse.
9. In the appeal now before me, the building is of a comparable footprint to the existing dwellinghouse. Planning permission exists to extend the dwelling. However, this may or may not be implemented and accordingly, I give this very little weight in assessing the comparable size of the dwelling and proposed building. Whilst size is not determinative and notwithstanding that the detached garage would be demolished, the area given to each aspect of the internal activities to be provided is generous and to my mind, far in excess of what might be considered reasonably required to accommodate the facilities proposed. The bar area would for example, comprise a substantial length of worktop surfaces, arranged in a 'U' shape, perhaps more akin to a kitchen and as such, appears to be out of context for a bar simply to be used for incidental

¹ Appeal Ref: APP/R5510/X/09/2103482

purposes. The proportion of floor space depicted for use as a cinema is again, far greater than might be expected for incidental purposes. Considered as a whole, the proposed building lacks some sense of reasonableness in relation to the enjoyment of the dwellinghouse itself, and what may be reasonably regarded as being incidental, having regard to the circumstances of the particular case.

10. To conclude, for the reasons set out above, I do not consider the proposal would benefit from the permitted development rights conveyed by Class E of the GPDO. The Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding at rear for use as gym / leisure was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

C Sherratt

Inspector