



Appeal Decision

Virtual Hearing Held on 05 January 2021

Site visit made on 05 January 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2021

Appeal Ref: APP/G5180/X/19/3235326
404 Blandford Road, Beckenham 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/19/02449/ELUD, dated 28 May 2019, was refused by notice dated 9 August 2019.
 - 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 is that the current use of the outbuilding is not a material change of use of the planning unit.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Ricki Sage against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Procedural matters

3. Firstly, I should explain that the planning merits of the development are not relevant to this appeal, which relates to an application for a lawful development certificate (LDC).
4. It is also necessary to clarify the nature of the proposal, as this was not set out clearly in the application that was made to the Council. In summary, the development is to establish whether the use of the existing outbuilding for personal training sessions, as described in the application and supporting documents, would result in a material change of use requiring planning permission. I have determined the appeal on this basis.

Main Issue

5. A statement of common ground including the site description, the agreed planning unit and planning history of the site, was agreed by the parties prior to the Hearing. From this it is clear that the main area of disagreement is whether the use, as described, is incidental to the residential use of the

dwelling or represents a material change in that use, that requires planning permission.

6. Accordingly, the main issue for this appeal is whether the Council's decision to refuse to issue the LDC for the application was well-founded.

Reasons

7. The appeal site comprises a two storey dwelling within a primarily residential area. The general character of the area is of close knit housing with small front gardens, set within generally modest plots. Some properties including the appeal site, have converted their front gardens into off street parking. At the time of my site visit there was considerable on street parking, although a number of spaces were still available.
8. An application for a LDC, was submitted to the Council on 28 May 2019. From questioning, it was clear that the Council's view is that the level of activity created by the use of the outbuilding, means that it cannot be considered to be incidental to the enjoyment of the dwellinghouse and planning permission is required.
9. In contrast, the appellant submits that the level of activity resulting from the use should either be considered to be de minimis, and if not, proposes that it does not change the character of the property and thereby does not amount to a material change of use of the land.
10. At the Hearing my attention was drawn to *Hertfordshire CC v SSCLG* (2012) EWHC 277. This case relates more to the issue of whether the intensification of an existing use, has reached the point where it gives rise to materially different planning circumstances. This is considered to be a different issue to the matters under consideration in this appeal. I therefore give this decision little weight.
11. S55(1) Town and Country Planning Act defines the two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. The first comprises activities which result in some physical alteration to the land with some degree of permanence, whilst the second comprises activities which are carried out in, alongside or on the land, but do not interfere with the actual physical characteristics of it.
12. S55(2) contains specific exclusions from the definition of development, including s55(2)(d), which excludes uses on a scale and nature incidental to the reasonable enjoyment by an occupant of the normal residential use of the buildings and land, which comprise the dwellinghouse and its curtilage. Pertinent to this appeal, this means that where a use, including home working, is considered to be incidental to the enjoyment of the dwelling house, then it will fall outside the definition of development and thus not require planning permission. It is therefore necessary for me to assess whether there has been a material change in the character of the dwelling, resulting from this particular activity.
13. From the evidence it is clear that the personal training sessions are restricted to the outbuilding, rather than the dwelling itself. However, access to the building is through a narrow pedestrian access adjacent to No 406 and then through the rear garden. It is also apparent that the outbuilding is used both

by the appellant, friends and for providing commercial personal training for visiting customers. At the time of my visit there are no physical barriers and in common with the parties I consider that the property remains as a single planning unit.

14. The appellant's evidence included two Client schedules for the weeks 18 and 25 May 2019. These seem to indicate there were some 32 or 33 business related sessions respectively. However, in evidence, Mr Sage confirmed that the number of sessions has now reduced, in part due to the Covid-19 restrictions and in part due to his health. I now understand that there are approximately 25 physical callers to the gym per week, with 4 to 5 a day on weekdays and 2 to 3 on Saturday mornings. He does not work on Sundays.
15. A proportion of these clients walk, or use public transport to get to the property, with others using private vehicles. It was submitted that during August through to October 2020, 62 clients walked and 52 drove to the site, with another 16 on-line sessions via Skype and Zoom, although it was agreed, that the way clients travel to the property is not something he can readily control. It was also established that online training is not suitable for all of his clients, some of whom are keen to return to physical training when current restrictions permit.
16. I have had regard to the acoustics report submitted by the appellant and the evidence helpfully provided by the third parties giving evidence at the Hearing. The training sessions have little, if any, consequential effect on neighbouring properties in terms of noise. This is not disputed by the Council and I have no reason to come to a different view.
17. Mr Kingsley Smith drew my attention to the activity generated, where child minding of up to 6 children is carried out from a dwellinghouse. He submitted that this is a similar activity that can be carried out without the need for planning permission. However, this is not necessarily the case, and childminding on this scale, can constitute a material change of use, depending on the particular circumstances of the site, such as type and size of the dwelling and its curtilage. Accordingly, I give this general comparison little weight.
18. I acknowledge that the training sessions themselves appear to be well controlled, and this is a view supported by the acoustic report and evidence provided by local residents about the lack of noise. Nonetheless to my mind, noise is not the only factor to consider. The comings and goings that arise from at least 4 to 5 clients a day, in addition to those individuals who would usually be expected to visit a dwelling, can also cause disturbance to neighbours. Any disturbance is exacerbated by the tight knit design of the properties and need for callers to use the narrow access and small rear garden, which is clearly visible for the rear windows and gardens of the neighbouring dwellings.
19. For the above reasons, in this compact residential setting, I do not consider that the scale of the business related training sessions, both at the time of the application, and at the reduced level, can reasonably be considered to be either de minimis or incidental to the enjoyment of the dwelling. Accordingly, a mixed use has occurred. I am satisfied that this finding accords with the advice found on the Planning Portal and referred to in the appellant's statement.

20. Consequently, in the particular circumstances of this case, I find that as a matter of fact and degree, the use of the outbuilding for business related training sessions on this scale, is not incidental to the use of the dwelling and results in an overall change in the character of the property.

Other matters

21. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have. The appellant's evidence makes a reference to a medical condition, which I understand may affect his ability to work away from home. I have therefore considered the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
22. I have also considered the Human Rights issues that may be pertinent to this appeal. However, for the above reasons, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights. I consider that the decision is proportionate and necessary in the circumstances.

Conclusion

23. 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 current use of the outbuilding being a material change of use of the planning unit, 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.

Hilary Orr

INSPECTOR