



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 12 July 2021

Appeal Ref: APP/C1950/X/20/3263973

**Skyborne, 21 Kentish Lane, Brookmans Park, Hatfield, Hertfordshire
AL9 6NG**

- 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 William Englander against the decision of Welwyn Hatfield Borough Council.
 - The application Ref: 6/2020/1487/LAWP, dated 23 June 2020, was refused by notice dated 17 September 2020.
 - 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 as *"Remove the existing Pool House with changing room, bathroom, sauna & store in rear garden. Form new replacement structure to incorporate gym, changing room, sauna, refreshments area & store room. New structure to be 2m, or greater, from the boundary with No.27. Height of outbuilding to be 2.5m from ground level flat roof. All uses in the proposed replacement outbuilding are incidental to the main dwelling, which does not have these uses, such as a gym, etc."*
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Decision

1. The appeal is dismissed.

Main Issue

2. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission for the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council has not found any conflict with the limitations under Classes E.1, E.2 and E.3 of the GPDO. I have no reasons to disagree. Turning, therefore, to the Council's reason for refusal, whether the purpose of the building would be incidental to the enjoyment of the dwellinghouse requires a judgement to be made about if the activity is one that is, as a matter of fact and degree, reasonably required of the primary residential use. This is the main issue.
3. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. In relation to Class E it advises that the rules allow a wide range of buildings as long as they can properly be described as having a purpose incidental to the enjoyment of the

house. It explains that a purpose incidental to a house would not cover 'normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen'.

4. The consideration to be given to the appeal is a legal determination that does not have regard to matters of planning merit such as its impact on the street scene or whether there are any very special circumstances to justify its presence in the Green Belt. Therefore, the representation from North Mymms Parish Council cannot affect my judgement on the appeal outcome.

Reasons

5. I accept that the end of the proposed building where there would be a sauna, changing room and other related facilities would largely be a replacement for an existing pool building to be demolished. Furthermore, although the next two sections of the building for 'gym/yoga study' and 'yoga+boxing area' appear to be on the large side, given the number of residents living in the main house and associated persons, the sizes of these spaces do not seem unreasonable. I have had regard to the Council's point that a former gym in another outbuilding is now used as an office. Nevertheless, the appellant's case that office spaces need to be separate due to the businesses that are run from the property, combined with the ever-increasing trend towards home working, which has accelerated during the coronavirus pandemic, is accepted.
6. Regarding the proposed refreshments area, while this may at times have an office business use for meeting clients, it is clearly shown as a refreshments area and that appears to be its main intended use. There is also little evidence to show that the businesses run from the property would not be able to operate without a refreshment area that would be shared anyway, and the appellant says would be largely associated with the pool. It might be desirable to have such a facility close to the pool when that is being used, but the main house is not insubstantial.
7. I refer to the appellant's letter to the Council dated 6 August 2020. In there it states "*The formal sitting room provides access to the dining room, which in turn leads into the kitchen providing a free flowing space for the family to live in. The dayroom provides a convenient space for children or parents to escape away from the main spaces within the house and the family room provides the private relaxation space, with cinema provision*". It goes on to state "*The spaces within the ground floor of the property are well used and allow members of the family to carry out separate activities without interfering in each other's space, which given the number of people in the house at any one time is important*".
8. Whilst not immediately adjacent to the pool, the house is relatively only a short distance away and the opportunity for indoor/outdoor gathering and having refreshments while enjoying the overall garden and pool is already available. Therefore, enjoying space outside by the pool in fine summer weather, including having BBQs would not be dependent on having a dedicated indoor refreshment area. Having a break-out area associated with the pool when used particularly on nice days would presumably be mainly outside as well. Shading could also be provided by other means. All in all, a building without the proposed refreshment space would not mean that the family could not exercise and socialise revolved around summer entertainment.

9. I have had regard to the layout of the gym/yoga spaces proposed in a letter to the Council on 21 August 2020 and I acknowledge that the family likes to exercise together. However, I see little reason why the gym/yoga areas could not accommodate some refreshment space for users of the gym while socialising and enjoying being with others in that exercise environment. This would not reasonably need to be an area of the size proposed which appears to show a bar with stools, a table and four chairs. The appellant also refers to keeping cold drinks in a fridge and having somewhere to sit and drink them. It seems to me this area would effectively be used as an extension of the primary living accommodation of the main dwelling rather than for uses incidental to it.
10. I cannot therefore conclude that, as a matter of fact and degree, the development applied for is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. Consequently, the Council's refusal to grant a certificate of lawful use or development in respect of the development described in the banner heading above was well-founded. Therefore, the appeal fails and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR