
Appeal Decision

Site visit made on 4 August 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2021

Appeal Ref: APP/C5690/X/20/3258236

47 Veda Road, Ladywell, London SE13 7JQ

- 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 Veda Road Ltd against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/117030, dated 15 June 2020, was refused by notice dated 31 July 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 LDC is sought is described as "The construction of an outbuilding in the rear garden at 47 Veda Road, London SE13."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the time arranged for the site visit nobody attended on behalf of the appellant or the Council. I was able to see some of the garden and existing outbuilding through the side gate and gauge the lie of the land from walking around the area. Subsequently, a letter was sent to both parties advising that I would be able to reach a decision on the appeal without another visit being arranged, but if either party had any objection to me proceeding on that basis they should say so in writing. No response was received within the timescale indicated. I shall therefore proceed on the basis of what I was able to see and the submitted evidence.
3. The Council's second reason for refusal makes reference to the proposed outbuilding being contrary to Class E(b) of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (the 'GPDO') for being more than a single storey. However, clause E(b) relates to "a container used for domestic heating purposes for the storage of oil or liquid petroleum gas" and is not relevant to this case. Limitation E.1.(b) relates to the 50% limit on total area of ground covered by the buildings, but the Council confirms in its Officer Report that this is not contravened. Under limitation E.1.(d) development is not permitted if "the building would have more than a single storey". It is clear from the evidence that both parties have pursued their case on this basis. This leads me to conclude that there is a typographical error. No prejudice would be caused to either party if I proceed on

the basis that the second reason for refusal should refer to **Class E.1(d)**, and not Class E(b).

4. A LDC application is not a planning application. The case must be considered solely on the facts of the case, the relevant planning law and legal tests. The planning merits of the case, therefore, do not fall to be considered. I have seen letters of objection from a number of residents concerned about the possible use of 47 Veda Road as a House in Multiple Occupation, limited car parking in the area, access to the alleyway and rights of way, questioning the possible uses of the proposed outbuilding, noise and disturbance that might arise from it being used as an entertainment venue, and alleged burning of trees. These letters and their comments are not taken into account. I have already determined an appeal¹ against refusal of a separate LDC application for works to the roof.

Main Issue

5. The purpose of an LDC is to determine whether future development, as described on the application form, would have been lawful on the date the application was made. In this case the crucial date is 15 June 2020. The onus is on the applicant to provide all the relevant information and evidence to support their case.
6. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded. In this case, it turns on whether the proposed outbuilding is permitted development (PD) under Class E of the GPDO. There are no Article 4 Directions in place which would restrict the use of PD rights. The site does not lie within a Conservation Area and the dwelling is not a Listed Building.

Reasons

7. The appeal property is an end of terrace dwelling with an existing outbuilding in the rear garden. Veda Road is on an incline and the appeal property is at the top of it, such that the property and its rear garden are elevated above gardens and dwellings in Algiers Road at the rear. Furthermore, the rear garden slopes down to the rear site boundary. Between Veda Road and Algiers Road there is an overgrown path leading towards the rear of the garden boundary of the property, but it was gated and locked.

Incidental use of the outbuilding

8. Class E of the GPDO allows for the provision within the curtilage of the dwellinghouse of (a) "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 alterations of such a building or enclosure", subject to a number of limitations set out in paragraphs E.1. to E.4.
9. Based on the scale of the relative floor areas, the Council considers the proposed outbuilding is of a significant size in relation to the original dwelling such that it is not reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
10. The submitted plans indicate that the existing outbuilding has a pool and shower/WC. The plans show the proposed outbuilding would have a bigger

¹ Appeal ref: APP/C5690/X/20/3258836 dated 14 May 2021

footprint than this structure and would be positioned further down the garden. It would also be further away from the rear elevation of the dwelling, such that the back wall of the outbuilding would be sited on the rear boundary of the plot. On the plans, the internal layout is clearly annotated to show the proposed outbuilding would have a separate office in one corner, with the rest of the open-plan internal space marked as areas for a snooker/games room, dance/yoga and a bar. There would be bi-fold doors facing towards the rear of the house and intervening garden giving access to this internal area.

11. It is necessary that Class E buildings are built for a 'purpose incidental to the enjoyment of the dwellinghouse'. Limitation E.4 explains that this includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic or personal enjoyment of the occupiers of the dwellinghouse. This is of limited help in this case. The government's Technical Guidance² in respect of Class E says that there can be a large range of other buildings that can include garden sheds, other storage buildings or garages. It also states that an incidental purpose would not include the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
12. Of further assistance on this matter, the Courts have held that an essential feature of an incidental use is that it should be functionally related to the primary use, which in this case is residential. For Class E buildings, the incidental use must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. The relationship should be one that is normally found, and not based on the personal choice or whim of the user. Whether a use is incidental is therefore a matter of fact and degree.
13. There is nothing in Class E that limits the dimensions of the footprint of an outbuilding. Limitation E.1.(b) does restricts the total area of ground covered by buildings, enclosures and containers within the curtilage of the dwellinghouse (excluding the original dwellinghouse itself) to no more than 50% of the total area of the curtilage. In its Officer Report, the Council confirms that the floor area of the proposed outbuilding, together with the porch and rear extension that were added to the original dwelling, do not contravene this. Therefore, based on floor area alone, there is nothing to suggest that the proposed outbuilding is not for purposes incidental to the dwellinghouse.
14. Whilst there is some dispute between the parties as to what would be the actual floor area of the proposed outbuilding, depending on whether the external steps are included, there is no dispute that the footprint would be similar to that of the original dwellinghouse (excluding the porch and rear extension which were later additions). However, assessment is not just a mathematical exercise.
15. The proposed building would occupy the entire width of the plot and extend to its rear boundary. The intervening garden would have a patio and seating areas, and the bi-fold doors to the front of the outbuilding would help link it to the use of the dwelling and garden. Notwithstanding the alleged access issues along the alleyway and the steps and door to it, the only access into the outbuilding itself

² Permitted development rights for householders - Technical Guidance Published by MHCLG Sept 2019

would be through the bi-fold doors from the garden. I find these factors would serve to constrain its use to an incidental one.

16. I did not go inside the dwelling, but it appeared to be similar to others in the road as a reasonably sized dwelling suitable for a family. The plans show it has two reception rooms on the ground floor plus a kitchen and hallway.
17. It is not uncommon or unreasonable for people to work from home and need space to do so. Therefore, an outbuilding to be used as a home office, instead of using space or a room within the dwelling and which may not be possible or available, is not uncommon. Nor is it unreasonable in my view.
18. Nor do I find it uncommon or unreasonable to have space for home exercise or games/recreation and for such uses to be located in outbuildings in the garden or even a garage, especially if there are no other suitable rooms available in the dwelling. Furthermore, there is no primary living accommodation proposed.
19. The Council quotes an extract from an appeal decision whereby the Inspector found that the proposed accommodation for a piano, large home office, substantial gymnasium and a games/cinema room was on such a large scale in relation to such a small property that the dwelling could become incidental to the outbuilding, or vice versa. I have not been provided with any plans or further details of this case. Each case will have its own particular circumstances and site specifics. Consequently, I am unable to make any meaningful or direct comparisons to the appeal proposal. In any event, I must consider the appeal before me on its own merits.
20. I am satisfied, as a matter of fact and degree, that the proposed uses as described by the appellant would be reasonably and sensibly related to the dwellinghouse for purposes incidental to the enjoyment of the occupiers of that dwellinghouse. I am also satisfied that the scale of the proposed building in conjunction with the proposed uses does not preclude it from being PD under Class E. The issue turns to whether the proposal would meet the limitations of Class E.

Construction of the outbuilding

21. The proposed outbuilding would be built on sloping ground, as the entrance to the outbuilding from the garden would be at a higher ground level than the ground level of the rear boundary and the alleyway beyond it. There is no definition of single storey in the GPDO or the Technical Guidance. However, a common dictionary definition is 'having only one floor or level'.
22. The plans show that the proposed incidental uses, as described above, would all be on one floor or level, with external steps leading down and below the floor level to a door that exits on to the passageway running along the rear curtilage boundary. I note the parties' agreement that the height of the building would meet the height limitations set out in Class E of the GPDO. Nonetheless, the plans clearly show the height of the rear elevation of the building adjacent to the alleyway would be taller than the front elevation of the building facing the dwelling, to take account of the sloping ground and difference in ground levels. On the rear elevation there would be windows serving the floor of

accommodation, and below them the door leading to the alleyway. This gives the impression of a building with more than a single storey.

23. The accommodation to provide the office/snooker/games/dance/yoga/bar areas would be on one floor or level, and from the rear of the dwelling and garden the structure would appear single storey. However, the outbuilding extends the entire width of the garden, so that the external steps would not run along the outside of the entire outbuilding. In my view, the steps form part of the outbuilding.
24. All of the above factors lead me to conclude that the outbuilding structure itself would comprise more than a single storey. I therefore conclude, based on the evidence before me and what I observed on site, that on the balance of probabilities the proposed outbuilding would contravene E.1.(d) and would not fall within Class E. Consequently, it would not benefit from PD rights and would not have been lawful at the time the application was made. Full planning permission is required for its construction.

Conclusion

25. Whilst I find the proposed use of the outbuilding would fall within the parameters of Class E, its construction would not comply with the limitations of that Class. Any contravention of the GPDO means the development would not be lawful.
26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development for the construction of an outbuilding for use as a home office, snooker/games room, dance/yoga area and bar area was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

K. Stephens
INSPECTOR