



Appeal Decisions

Site visit made on 24 August 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Appeal A Ref: APP/Y5420/C/20/3250777

Appeal B Ref: APP/Y5420/C/20/3250779

105 Whittington Road, London N22 8YR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Danail Brakiovski against an enforcement notice issued by the Council of the London Borough of Haringey. Appeal B is made by Mrs Tatiana Brakiovski.
- The enforcement notice was issued on 3 March 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear garden outbuilding.
- The requirements of the notice are:
 - 1. Demolish the rear garden outbuilding in its entirety,
 - 2. Remove from the land any debris resulting from carrying out step 1 above.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on grounds (c), (f) and (g).

Summary of Decisions: The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

1. There is a relevant planning history, which it is necessary to summarise. The Council has previously refused two applications for lawful development certificates for an outbuilding and its use as a gym, hobby and storage room¹. The Council considered that the applicant has not demonstrated that an outbuilding of this size is genuinely and reasonably required or necessary to accommodate the proposed uses nor that its purpose is genuinely incidental to the enjoyment of the dwellinghouse. As such, the outbuilding was not considered permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Both of those decisions were appealed and the appeals were dismissed², with the Inspector reaching the same conclusions as the Council.
2. However, it became clear after the appeal decisions were made that the Inspector had not had sight of some of the evidence provided by the appellants. The relevant documents have been resubmitted and I have had regard to this evidence in my consideration of the ground (c) appeals.

¹ Ref HGY/2019/2296 and HGY/2017/2488.

² Ref APP/Y5420/X/19/3226166 and 3237406 dated 21 January 2020.

3. The appellants provide several appeal decisions as examples of how case law and judicial authority should be interpreted and applied by decision makers. I have had regard to these principles, as set out below, taking account of the facts relevant to this particular case.

The ground (c) appeals

4. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being on the balance of probabilities. In order to succeed on a ground (c) appeal, the appellants must show that the matters alleged do not constitute a breach of planning control.
5. The subject of the enforcement notice is an outbuilding sited within the rear garden of a relatively large and extended, semi-detached house. At the time of my site visit, the outbuilding was divided into two main rooms. One of which was occupied by various pieces of gym equipment and the other contained a desk, some small pieces of furniture and a large sports mat. There was also a shower room/wc and storeroom.
6. The appellant's case is that the development falls within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the GPDO, which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *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* is permitted development subject to conditions and limitations. The main area of dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.
7. E.4 says that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance³ advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house.
8. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse, as such⁴, not to use for a purpose integral to the use as a dwellinghouse⁵. Whether that is the case will depend on a fact and degree assessment⁶. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment. The carrying out of some hobby and/or working from home may

³ Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

⁴ In *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942, it was held that the words "as such" in the Act must mean "of and incidental to the enjoyment of the dwellinghouse as a dwellinghouse."

⁵ *Rambridge v SSE & East Hertfordshire DC* (QBD 22.11.96 CO-593-96) Class E permits a building only if it is required for a purpose incidental to a dwellinghouse, not for a primary residential use.

⁶ *Pêche d'Or Investments v SSE* [1996] JPL 311.

be incidental, but it is always vital that there is a normal functional relationship between the incidental and the residential use. The keynote is reasonableness.

9. The Court in *Emin*⁷ confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.
10. In this case, the unauthorised development is a relatively large building of substantial construction. The plans⁸ indicate that the building would be divided into two main rooms, with an entrance lobby. One room would accommodate a gym with various pieces of equipment and a free weights area, while the other would be used as a hobby room to accommodate an art/karate and astrology area. This is consistent with how the building was laid out during my site visit.
11. The appellants explain how the family uses the space. I am told that the family members each have hobbies which include painting, martial arts, fitness and astrology. These require specific and dedicated indoor space. The building has been designed to be functional for its intended purpose, while complying with building regulations. I acknowledge that an outbuilding serving a purpose as a home gym, with associated shower and toilet facilities, could be considered incidental to the enjoyment of the dwellinghouse. In this case, the gym is laid out with several small pieces of equipment, all of which are consistent with home use. The circulatory space around the equipment is not excessive. Although the shower room could be considered primary accommodation, its size is modest and such facilities are reasonable for use in association with a home gym/workout area. Similarly, a storeroom for garden tools and/or personal belongings could be considered an incidental use of an outbuilding.
12. The separate martial arts area also contains space for art and astrology, which is used by different family members at different times. A hobby room, such as this, could not be accommodated in the extended house due to the size and lighting requirements, and the desired need for an element of separation from day-to-day domestic activities. I consider it reasonable that the appellants need the space to enable the four adult occupants of the dwellinghouse to engage in their varied hobbies and activities, which are conducive to home practise. As described above, the outbuilding is relatively large. However, it is sited within an extensive rear garden and it would serve a substantial family home. It would be appropriate in terms of its scale. Crucially, the functional relationship between the outbuilding and the dwellinghouse would be maintained and the uses would remain subordinate to the primary residential use.
13. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be genuinely required for a purpose incidental

⁷ *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

⁸ Drawing No PL-500 July 2019.

to the enjoyment of the dwellinghouse as such. Given the plans and explanation provided by the appellants, I am satisfied that its true purpose would be as an incidental use. Overall, there is a clear justification for an additional building of the size and layout proposed, and for the purposes described.

14. The Council may have concerns about the future use of the outbuilding. Any material change of use of the building would require planning permission and the Council may take enforcement action should that eventuality occur.
15. I appreciate that my findings differ from the conclusions of a previous Inspector, who considered the same development at the site in relation to an appeal against the Council's refusal of two lawful development certificate applications. However, it has been accepted that the Inspector did not have full sight of the appellants' evidence to which I have had regard. I am satisfied that this justifies a different conclusion, therefore.

Conclusion

16. The totality of the evidence presented in support of the appellant's claim shows that, on the balance of probability, the development satisfies the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO and would not constitute a breach of planning control.
17. For the reasons given above, I conclude that the appeals should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

18. The appeals are allowed and the enforcement notice is quashed.

Debbie Moore

Inspector