The Planning Inspectorate

Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/G5180/X/21/3273178
144 Southborough Lane, Bromley BR2 8AL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Zoe Clarke against the decision of the Council of the London Borough of Bromley.
- The application Ref DC/20/04040/PLUD, dated 9 September 2020, was refused by notice dated 21 December 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 alteration of rear garage door to bifold doors, front garage door changed to a window and internal stud walls erected.

Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appellant suggests that the proposed works to the outbuilding would be 'permitted development'. This indicates they consider it would be lawful by reason of the planning permission granted under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This enables the construction of buildings etc. incidental to the enjoyment of a dwellinghouse. I understand that the Council consider that the building exceeds the limitations of that class and that the use of the building would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

3. As a result, the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded, taking account of the size of the outbuilding and its proposed use.

Reasons

4. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability. The evidence to support the application should be precise and unambiguous.

5. 144 Southborough Lane is a substantial house on a large plot. In front of the house is a large building, subject of this appeal, currently comprising a garage on the ground floor with additional space above. The proposal would alter the external elevations of the building and subdivide it internally to provide a lounge area, kitchen, cloak room and storage space on the ground floor with two bedrooms and a bathroom above.

6. The external alterations would alter the appearance of the building and mean that the works would comprise development as defined at Section 55 of the Act. Development that accords with Class E, Part 1, Schedule 2 of the GPDO is granted planning permission and includes buildings required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the improvement or other alteration of such a building. However, development is not permitted in relation to buildings that would have more than a single storey, be on land forward of a wall forming the principal elevation of the original dwellinghouse or over certain size limitations.

7. I note that the Council suggest the building is located forward of the original dwellinghouse and does not comply with the size limitations within the GPDO. This is not disputed by the appellant. I note also the building is of two storeys.

8. The resulting building would contain two bedrooms, bathroom, kitchen and living space. Consequently, it would contain all the facilities for day to day living. The appellant asserts that it would be ancillary to the main house and used as guest accommodation that provides safe separate accommodation taking account of concerns relating to the coronavirus pandemic. The utilities would remain connected to the main house. Nevertheless, on the balance of probability the level of accommodation provided means that the use of the building would not be incidental to the dwellinghouse.

9. For these reasons, the proposed development would not comply with Class E, Part 1, Schedule 2 of the GPDO.

10. I understand planning permission may have been granted in the past for alternative use as a "granny flat" or swimming pool. However, the proposal would differ from these so must be considered separately against the provisions of the Act and GPDO.

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed outbuilding was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

AJ Steen

INSPECTOR