
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2021

Appeal Ref: APP/N5090/X/21/3275368

1 Halliwick Road, Muswell Hill, London N10 1AA

- 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 Ben Ridley against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/6258/192, dated 23 December 2020, was refused by notice dated 31 March 2021.
 - 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 a garden room in the rear garden.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.¹

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded.

Reasons

4. The appeal relates to a two storey, end of terrace, period property occupied by the appellant and his family, which has recently been extended at ground and roof level. There is a large, irregular-shaped rear garden that becomes wider further away from the house. The appellant proposes to build a 'garden room' outbuilding at the end of the garden. It would be set in from the side boundaries and, in order to retain an established yew tree on the rear boundary, would include an external courtyard arranged around the tree.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

5. The outbuilding would be 74sqm in area and would serve three purposes, namely as a south-facing family room, as the main room in the house overlooking the garden faces north; as an office and as a workshop. The latter would be used to make scaled architectural models and large format architectural drawings.
6. The Council's reason for refusal is that the use of the outbuilding would not be incidental to the enjoyment of the dwelling. As such, it would not accord with Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). In particular, the appellant had not demonstrated how the building would be used and why it would need to be so big.
7. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case.² The building will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.
8. I find the proposed uses of office and workshop would be incidental to the enjoyment of the dwelling. This is because the appellant has shown that these uses are reasonably required. He states he needs to work in relative seclusion away from the house during the week and this is understandable if he is producing delicate models or large drawings. These uses would occupy approximately half the space. The home office is an example of an incidental use in a typical space enjoyed by many householders.
9. The remaining portion of the building is intended for use as a weekend family room, where the appellant would entertain.³ It would be used as a sitting area and the plans show it would be laid out with a three piece suite and a coffee table. Based on the appellant's description of the use and the internal layout, it is my view that this use of the building would amount to the provision of primary living accommodation. The Department for Communities and Local Government publication "Permitted development rights for householders: technical guidance" sets out the meaning of incidental does not cover use of an outbuilding or garden room for primary living accommodation, such as a lounge. Whilst the appellant expresses a wish for a sunny room in which to entertain, this does not make it an incidental use.
10. In order for a building to be considered as permitted development all of it must be required for incidental purposes. A building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwelling. The family space is, in effect, a lounge and this use could reasonably be expected to be accommodated in the main building. The use of this space would not materially differ from the use of, for example, an open plan kitchen/dining/seating area or a separate lounge within the main dwelling where people

² Emin v SSE & Mid Sussex DC [1989] EGCS 16

³ Appellant's Final Comments: "The family garden room area will be used as a family space and an entertaining space where guests come for garden parties, barbecues etc ... On sunny days we plan to frequently entertain guests, sometimes even up to 20 people plus we have a family of four... The space will provide somewhere comfortable to sit and access drinks and snacks from a fridge."

gather to relax and be entertained. As such, the garden room merely replicates the use of the existing accommodation within the house and extends the primary residential use into the proposed outbuilding. Therefore, whilst I am satisfied that some of the proposed activities could be said to be incidental, I am not satisfied that, as a whole, the garden room would be required for incidental purposes. Therefore, it would not fall within the scope of Class E as permitted development.

11. The Council's case relies in large part on a previous appeal decision for a similar, but larger, garden room 123 sqm in area, which was dismissed in September 2020.⁴ However, the Inspector concluded in that case that they were not satisfied the development was lawful due to a lack of detailed evidence. That is not the case with the appeal before me. It is my view that whilst other appeal decisions are material considerations, all decisions turn on their own particular circumstances based on the evidence before those Inspectors.
12. Therefore, on the evidence before me, I am not satisfied, as a matter of fact and degree, that the totality of the proposed garden room is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities. As such it would not fall within the parameters of Class E, Part 1, Schedule 2 to the GPDO. Accordingly, it would not have been lawful at the time of the LDC application.

Conclusion

13. 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 erection of a garden room 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.

D Fleming

INSPECTOR

⁴ Appeal ref: APP/N5090/X/19/3243779