



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal Ref: APP/N1920/X/21/3268400

The Gables, Barnet Road, Potters Bar EN6 2SJ

- 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 Tagbo Umenyilora against the decision of Hertsmere Borough Council.
 - The application Ref 20/0821/CLP, dated 10 June 2020, was refused by notice dated 11 August 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 erection of single storey detached outbuilding, pool house and gym studio ancillary to main dwelling to include associated landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I consider that this appeal can be determined without a site visit without causing prejudice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.

Main Issue

3. The main issue is whether the Council's decision to refuse an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit.

Reasons

4. The appeal property is a large, detached house set within spacious grounds. The proposal is for three single storey outbuildings – one would be 583m² and would accommodate a swimming pool and sauna, another would be 378m² and would accommodate a yoga/pilates studio and personal gym and the third would be a 153m² pavilion building.
5. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the provision within the curtilage of a dwellinghouse "any building required for a purpose incidental to the enjoyment of the dwellinghouse as such".

6. There is no dispute between the parties that the proposed outbuildings would be within the curtilage of the dwellinghouse and that they would meet all the requirements of paragraphs E.1. to E.3. of Class E of the GPDO. I have no reason to disagree.
7. The Council's reasons for refusal considers that due to their size and different uses the outbuildings would go beyond what would be required for a purpose incidental to the enjoyment of the dwellinghouse. Whether the purpose of the proposed outbuildings would be incidental to the enjoyment of the dwellinghouse requires a judgement to be made about whether the activities are, as a matter of fact and degree, reasonably required for a purpose incidental to the enjoyment of the dwellinghouse and not be for a primary residential use.
8. Case law establishes the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse.... the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse." Moreover, it is established that the term 'incidental to the enjoyment of the dwellinghouse' "cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case."
9. In this case, the Council contend that the combined footprint of the outbuildings at 1109m² would be 331% larger than the footprint of the original dwellinghouse. Albeit the outbuildings would be single storey, their collective overall size would be substantial and would occupy a large portion of what is a generous sized rear garden. Having regard to caselaw, the size of the buildings may not in itself be conclusive but it is an important consideration. However, it is necessary to consider whether in this particular case, it has been shown that the proposed buildings are reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
10. The appellant contends that the outbuildings will provide leisure and recreational facilities for family use to improve their quality of life and overall health and wellbeing. It is submitted that the appellant and his family are passionate gym users, and that the appellant's wife will use the gymnasium for yoga and pilates as well as light exercise. The pavilion will be used as an area to relax and enjoy the extensive garden area.
11. The submitted plans indicate that the swimming pool with associated circulation space, a sauna and a shower room is of generous proportions. The gym area would be used to accommodate multiple pieces of gym equipment. I accept that space is required around the pieces of gym equipment. However, it has not been shown why the gym use together with the yoga/pilates use require the amount of space as indicated and why they could not be accommodated in a building of more modest proportions or elsewhere in the main house. There is very little reasoning to explain why these buildings are reasonably required for example, no further information is provided regarding the family - such as numbers of individuals in the household and whether the

provision of this level of accommodation is reasonably required to serve the household.

12. The proposed pavilion would also provide spacious accommodation. However, there is no substantive evidence to explain why such a relatively large space is reasonably required other than in general terms as a place to sit, relax and enjoy the garden.
13. The appellant refers to examples of appeal decisions whereby the proposed outbuilding(s) was considered reasonably necessary for purposes incidental to the enjoyment of the dwellinghouse. One of these appeal decisions¹ albeit in relation to a large dwelling set within a large plot, concerned the provision of two outbuildings, another² concerned the provision of a 200m² swimming pool and the other³ concerned the provision of a double garage, garden store and swimming pool. Whilst I do not have the full details before me, from the information provided, all these examples were considered reasonably required for purposes incidental to the enjoyment of the dwellinghouse. However, they are for different developments which were assessed on the facts specific to each site and are not directly comparable with the appeal proposal before me.
14. In LDC cases the burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. A judgement therefore has to be made based on the particular facts and site-specific circumstance of each particular case. I have determined this case having regard to the evidence submitted and having regard to the proposed development and site.
15. Whilst swimming pool/sauna/gym/yoga/pilates facilities and a place to sit and relax are uses which could be considered as incidental to the enjoyment of the dwellinghouse as such, as a matter of fact and degree, the spaces given over to these appear over-generous and there is little justification provided as to why facilities of this size are necessary. Moreover, I consider that the spacious accommodation proposed would be disproportionate in scale to that of the main dwellinghouse. Despite the generous garden size, the proposal would result in an unbalanced relationship between the main dwellinghouse and the proposed outbuildings.
16. On the evidence before me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has not been shown that the proposed outbuildings are reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The proposal would not be permitted development falling within Class E of the GPDO.

Conclusion

17. 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 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.

Elizabeth Jones

INSPECTOR

¹ APP/G5180/X/15/3011495

² APP/H4505/X/14/3001056

³ APP/P5870/X/14/2227399