
Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/Z5060/X/21/3271735
225 Rose Lane, Chadwell Heath RM6 5NH

- 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 Iftimie Rusu against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 21/00252/CLUP, dated 12 February 2021, was refused by notice dated 22 February 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 erection of rear out-building.

Summary Decision: The appeal is dismissed.

Background and Main Issue

1. The appellant suggests that the proposed outbuilding 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 do not dispute that the building would fall within the size criteria of the GPDO. I see no reason to disagree with their conclusions in this regard. Nevertheless, the Council suggest that, due to the size and proposed use of the building, it would not be incidental to the dwellinghouse as required by the GPDO.
2. Therefore, the main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded, taking account of whether the use of the outbuilding would be incidental to the dwellinghouse.
3. No site visit was undertaken as it was not necessary taking account of the issues raised in the appeal. However, the appellant supplied a number of photographs of the site and its immediate surroundings. I have taken these into account in coming to my decision.

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. The proposal would comprise an outbuilding to the rear of the garden with a garage in the centre, store to one side and gym to the other. The garage would have an opening to the access and parking area to the rear, although it is unclear whether this opening would have doors, shutters or any other form of enclosure. Double doors would open into the garage from the garden, such that they restrict the useable length of the garage for car parking. The store and gym would have windows facing toward the garden, the gym having a glazed door opening to the access and parking to the rear. There would be doors from the garage to the two rooms to either side.
6. Access to the garage is from an access to Rose Hatch Avenue at the other end of the terrace of houses of which 225 Rose Lane forms part. There is a parking area to the rear of the property. The garage would open directly onto this access and parking area. There is a lockable gate to that access and parking area to which I understand the appellant has keys.
7. The footprint of the building would be substantial, particularly in relation to the footprint of the existing dwelling, and it would be a significant building across most of the width of the property. Nevertheless, it would be at the end of a long rear garden.
8. The building would be laid out such that the garage is in the centre, which would make the rooms to either side independent. However, there is limited information provided as to how the rooms in the building would be used, beyond referring to them as storage and a gym. I note that it is intended to park a car in the garage, although the length of vehicle may be restricted by the internally opening double-glazed doors. Consequently, it is unclear how the spaces within the building would be used in practice.
9. Taking account of the above, I consider that the lack of information as to how the spaces would be used in practice means that it is unclear whether the proposed building's use would be incidental to the dwellinghouse.
10. For these reasons, on the balance of probability I conclude that the use of the outbuilding would not be incidental to the dwellinghouse. Consequently, the Council's decision to refuse to grant an LDC was well-founded and the appeal should not succeed.

Formal Decision

11. The appeal is dismissed.

AJ Steen

INSPECTOR