



Appeal Decision

Site visit made on 18 November 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 December 2021

Appeal Ref: APP/E5330/X/20/3263719

147 Kidbrooke Park Road, London SE3 9PW

- 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 John Mcelroy against the decision of Royal Borough of Greenwich Council.
 - The application Ref 20/2161/CP, dated 20 July 2020, was refused by notice dated 29 September 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 construction of a detached outbuilding at the rear of the property.
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Decision

1. The appeal is dismissed.

Background

2. My consideration of this appeal rests on the facts of the case, relevant planning law and judicial authority. The burden of proof is on the appellant and the appropriate test of evidence is the balance of probabilities. No 147 is a semi-detached dwelling with a private garden area at the rear. An LDC is sought for a proposed outbuilding at the back of the house.
3. The Council's reason for refusal is that the proposal, taken in conjunction with the existing ground floor rear extension, would project beyond the original rear wall of the house by more than 6m, and so would fall outside the limitations of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). Although the appellant argues that the new building should not be added cumulatively to the existing extension, he does not dispute the Council's conclusion over the total projection of existing and proposed rear structures from the house.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

5. Amongst other things, Class E of Schedule 2, Part 1 of the GPDO allows for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

6. The 'Permitted development rights for householders - Technical Guidance' (Ministry of Housing, Communities and Local Government, September 2019) gives examples of common buildings such as garden sheds, other storage buildings or garages as being permitted by Class E, as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It goes on to clarify that a purpose incidental to a house would not cover normal residential uses, such as primary living accommodation including bedrooms, bathrooms or kitchens.
7. The question of the purpose of the proposed new structure therefore falls to be considered. This principle follows the judgement in *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, 58 P&CR, which refers to the need to address 'the nature of the activities to be carried on in the proposed building to ensure that they are incidental or conducive to the very condition of living in the dwellinghouse'.
8. The application form asserts that the outbuilding would be 'of domestic use'. However, the term 'domestic use' does not differentiate between primary and incidental residential purposes. There is little elaboration of this matter within the appellant's statement of case.
9. Turning to the proposed drawings, it is equally difficult to make out the proposed purpose of the structure, which has no annotation other than 'Outbuilding'. If built as proposed, the structure would have glazed panels and a central double door facing towards the rear garden plot, but no other apparent means of access. It would span the full width of the back of the house, exceeding 6m, but in terms of depth, would be around 2.145m. The building would therefore appear to be impractical for many of the purposes that are normally taken as being incidental to residential use. In the absence of clarity regarding the use of the development, I am unable to be certain that its purpose would be incidental, within the limits of Class E.
10. Even if this could be established, it is necessary to consider the physical relationship between it and the main body of the house. The Technical Guidance confirms that buildings which are attached to the house are not permitted under Class E, and would instead be subject to the rules in Class A. The Technical Guidance does not go into detail consideration of the degree of attachment, which suggests a broad interpretation. However, as the new building would be attached to the house by shared rainwater goods, it is hard to conclude that it would in fact stand fully detached.
11. The appellant contends that the new structure would be 882mm from the back of the existing building. However, this dimension refers to the distance from the back of the new building to the back of the kitchen/dining room end wall. Moreover, there is a first floor balcony that projects beyond this end wall. The proposed side elevation shows that the back of the proposed outbuilding would sit at a distance of only 52mm from the columns that support the balcony. At this negligible distance, the new building would harmfully obscure the present outlook from the existing dining room and kitchen areas.
12. Whilst it is a matter primarily for the occupier to determine what incidental purpose he proposes to enjoy, an objective test of reasonableness should be applied in each individual case. In the absence of any convincing explanation for the siting of a new building that would actively harm the existing living conditions, I am unable to conclude that there is a reasonable requirement for

- it. Furthermore, in view of this harm, I equally find that the new building would not be subordinate to the main house.
13. It is the case that there is no prescribed distance at which a detached outbuilding should be located from the main house. Nonetheless, at this minimal degree of separation, the new building would appear as part and parcel of the principal dwelling, unless one was standing close enough to perceive the small gap.
14. In summation, I find that the proposed structure would achieve insufficient detachment from the house for the purposes of Class E. The gaps would, to my mind, be *de minimis* for planning purposes, and in any event, there would be physical attachment via the guttering. Crucially, the appellant has failed to show that the building would be put to a use that would be incidental to the enjoyment of the main house.
15. Therefore, on balance of probability, it has not been shown that the proposed development would be granted by Schedule 2, Part 1, Class E of the GPDO. I agree with the Council that the proposal should more properly be considered against the provisions of Schedule 2, Part 1, Class A of the GPDO.

Conclusion

16. For the reasons above, I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR