



Appeal Decision

Site visit made on 30 November 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2021

Appeal Ref: APP/Z5060/X/20/3261007

73 Manor Road, Dagenham RM10 8BB

- 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 F Caglar against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 20/01150/CLUP, dated 02 June 2020, was refused by notice dated 21 July 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 described as a "single storey outbuilding ancillary to the main dwelling house, 2.m away from boundaries, flat roof with max height at 2.5m with all windows and the door facing the host property".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site visit procedure was altered from an accompanied site visit to an access required site visit, as the Council Officer was not present when I arrived at the appeal site during the pre-arranged time and date. Both parties were subsequently written to explaining the change in procedure and provided the opportunity to comment. As such, I am satisfied that neither party would be prejudiced by this.
3. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed outbuilding would be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

Whether incidental

5. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. The Council determined that owing to its excessive size, in relation to the footprints of both the existing dwellinghouse and surrounding dwellings, the single storey outbuilding, would fall foul of the limitations and conditions of Class E of Schedule 2, Part 1 of the GPDO,. The Council also state that the application fails to demonstrate that the purpose would be incidental to the dwellinghouse. The decision therefore turns on whether the building is for a purpose incidental to the enjoyment of the dwellinghouse.
6. It has been established by case law that an incidental use should be functionally related to the primary use (as a dwellinghouse). The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Case law has also established that there was no warrant in the legislation for exclusion of a particular type of room or building from Class E rights as a matter of law.
7. The appeal site is a detached bungalow within a well sized plot in a residential area. There is an existing garage/outbuilding located to the side and rear of the bungalow. The proposed outbuilding would be located towards the end of the rear garden. The floor plan submitted indicates that it would be subdivided internally into five separate areas, which include a gym, a pool table/games room, an office, a storeroom, and a separate toilet/shower room. The appellant states that the outbuilding is required to accommodate the needs of an expanding family and would provide facilities/storage facilities required as a result of the Covid-19 pandemic and the construction of an 8m deep single storey extension which has recently been permitted under prior approval. In addition, the appellant also states that the existing rear garden is a very large and expensive to maintain.
8. The stated purpose of the outbuilding as a gym, a games room, an office, a storeroom, and a separate toilet/shower room, are all capable of being incidental to the enjoyment of the dwellinghouse. I also note that the appellant states that the outbuilding would be ancillary to the main dwelling house. However, the footprint of the outbuilding, approximately 80 square metres, is

broadly similar to the footprint of the original bungalow. In this respect the outbuilding would be large in relation to the bungalow, and very limited information has been provided to indicate that the outbuilding is of a scale that is genuinely and reasonably required to achieve the stated purposes.

9. Taken as a whole therefore, the space provided by the proposed outbuilding is excessive in scale for the stated purpose, and the evidence submitted falls well short of discharging the burden of proof. On the balance of probabilities, I do not therefore find that the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse. I therefore find that the outbuilding is not permitted development under Class E of Schedule 2 Part 1 of the GPDO, and planning permission is required.

Conclusion

10. The basis of the application is that the proposal benefits from permitted development rights under Class E of Schedule 2 Part 1 of the GPDO, but I have found that it would not be incidental to the enjoyment of the dwellinghouse. It therefore requires planning permission.
11. I conclude that the Council's refusal to grant a certificate of lawful use or development for the single storey outbuilding is well-founded, and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR