



Appeal Decision

Site visit made on 24 February 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/Z5060/X/20/3261075

13 Wayside Gardens, Dagenham RM10 8QH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Adrian Hrinko against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 20/01560/CLUP, dated 30 July 2020, was refused by notice dated 15 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 described as: Removal of existing outbuilding and the erection of new outbuilding for ancillary annex use.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Planning Practice Guidance¹ is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application. Therefore I cannot take them into account. Planning merits include matters such as planning policies, planning guidance (relevant to applications for planning permission), the effect of the proposal on neighbours or the character and appearance of the area, or other buildings which have been granted planning permission elsewhere.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. Under section 192(1) of the 1990 Act, if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the operations in question.
5. Under section 192(2), if, on an application under this section, the local planning authority are provided with information satisfying them that the operations described in the application would be lawful if begun at the time of the

¹ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) grants planning permission for specified forms of development, subject to conditions and limitations. Schedule 2, Part 1, Class E of the Order concerns buildings etc incidental to the enjoyment of a dwellinghouse. Class E provides that the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development.
7. The drawings provided show that the proposal is for the demolition of an existing outbuilding and its replacement with a new outbuilding. The new outbuilding would include a bedroom and bathroom. It is clear from the appellant's submissions that the intention is for the appellant's mother-in-law to live in the new outbuilding. As such, the proposal constitutes primary living accommodation.
8. It is well-established in case law that, for the purposes of Class E, the construction of a building with primary living accommodation would not be incidental to the enjoyment of the dwellinghouse. A purpose incidental to a dwellinghouse does not cover normal residential uses, such as the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. So the proposal is not permitted development under Class E.
9. Whilst no kitchen is proposed in the outbuilding and it is intended that the occupant of the new building would use kitchen facilities in the main house, this makes no difference in this case as to whether the proposal constitutes primary living accommodation or not, particularly given what is shown on the drawings and set out in the appellant's submissions.
10. I appreciate the appeal site already has an existing outbuilding (used for storage) of a size comparable to the proposal and that the appellant states the only access will be through the main dwelling. But these points make no difference as to whether this proposal would be lawful or not.
11. My attention has been drawn to applications approved in the surrounding area, which the appellant describes as similar. But I have not been provided with any details to know how these may be relevant to the question of whether the proposed development before me is lawful or not.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Removal of existing outbuilding and the erection of new outbuilding for ancillary annex use', 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.

L Perkins

INSPECTOR