



Appeal Decision

Site visit made on 22 February 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/R5510/X/20/3264413

43 Monmouth Road, Hayes, UB3 4JH

- 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 Davood Jafary against the decision of London Borough of Hillingdon.
 - The application ref 75336/APP/2020/3007, dated 21 September 2020, was refused by notice dated 30 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 a proposed single storey outbuilding at the rear end of the rear garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is whether the Council's refusal of the LDC application was well-founded. This turns on whether the appellant has shown that, on the balance of probability, planning permission is granted for the proposal 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

3. The appeal site is occupied by a semi-detached dwelling with a deep rear garden. The proposal involves erecting a freestanding outbuilding towards the end of the rear garden, adjacent to the rear and side boundaries.
4. The provision of an outbuilding within the curtilage of a dwelling is granted permission by Article 3, Schedule 2, Part 1, Class E of the GPDO, where the building is required for a purpose incidental to the enjoyment of the dwelling as such and subject to the relevant limitations on size, height and location set out in paragraphs E.1 to E.3 not being exceeded. The effect of the limitation in paragraph E.1 (e)(ii) of Class E is that where the height of the building would exceed 2.5 m above ground level and it is located within 2 m of the boundary of the curtilage of the dwelling, permission is not granted by the GPDO.
5. According to the submitted drawings, the design of the outbuilding incorporates a flat roof adjacent to the side and rear boundaries, with an overall height above ground level of 2.5 m. Therefore, no part of the outbuilding within 2 m of the site boundaries would exceed 2.5 m in height. However, the outbuilding

would also have a central section of dual pitch roof with an overall height of 3.6 m above ground level. The Government's Technical Guidance (TG)¹ assists in interpreting and applying the rules on permitted development. Whilst the guidance does not have the same force as statute, it should nevertheless be regarded as authoritative. On page 43, the TG explains that in paragraph E.1 (e)(ii), it is the *total* height of the building that is relevant, not just the part of the building which would fall within 2 m of a boundary. As the total height is more than 2.5 m, the outbuilding cannot therefore be granted permission by Class E.

6. The Council did not seek to argue that the outbuilding would exceed the other relevant physical limitations in paragraph E.1 and I have found nothing which would lead me to conclude otherwise. Paragraphs E.2 and E.3 are not relevant in this instance. Nevertheless, by failing to meet the height limitation in paragraph E.1 (e)(ii), the outbuilding cannot be granted permission by Class E.
7. Moreover, as already noted above, to be permitted by Class E the outbuilding must be required for an incidental purpose. In the context of a dwelling, an incidental purpose is generally regarded as a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it but would not include use as primary living accommodation such as a bedroom, bathroom, or kitchen.
8. Relevant case law has established that 'required' for an incidental purpose in Class E should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose².
9. The TG explains that a large range of buildings, including garden sheds, storage buildings and garages, can potentially fall within Class E where they can properly be described as having a purpose incidental to the enjoyment of the dwelling. The proposed use of the outbuilding is described as a 'store'. Use for domestic storage associated with a dwelling would normally be regarded as an activity subordinate to and connected with the running of that dwelling. Such a use could therefore reasonably be regarded as one which would ordinarily be incidental to the enjoyment of the dwelling.
10. Nevertheless, limited detail has been submitted concerning the nature of the storage use proposed. With a footprint of around 44 m², the outbuilding would be of significant size, albeit somewhat smaller than the 60 m² figure referred to by the Council. The outbuilding would have a considerably greater footprint than, for example, a single garage or a similarly-sized curtilage structure that might be used by many householders for domestic storage purposes. Therefore, I cannot be certain that the outbuilding would be other than disproportionately large in relation to what would reasonably be required to accommodate the stated proposed use.
11. In addition, the submitted drawings show that the outbuilding would have a large area of glazing and a door in the garden-facing elevation, with pairs of

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019.

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

three- light windows in each side elevation and a second door in the rear elevation. The arrangement of elevational openings in the outbuilding is not explained by the proposed storage use. It is not clear why such extensive areas of glazing would be required in a non-habitable structure. To my mind, the elevational treatment adds to the doubt over whether the outbuilding is reasonably required.

12. Therefore, even if the height limitation in paragraph E.1 (e)(ii) had otherwise been met, based on the available evidence and as a matter of fact and degree I am not persuaded that the outbuilding would be genuinely and reasonably required to accommodate the proposed use and so achieve the purpose of being incidental to the enjoyment of the dwelling and fall within Class E. The appellant did not advance any firm evidence which might have led to a different conclusion.
13. Accordingly, the appellant has failed to show to the required standard that the outbuilding is granted permission by Article 3, Schedule 2, Part 1, Class E of the GPDO.

Conclusion

14. 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 single storey outbuilding 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.

Stephen Hawkins

INSPECTOR