



Appeal Decision

Site visit made on 23 March 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 20th April 2022

Appeal Ref: APP/G3110/X/21/3288057

12 Bulan Road, Oxford, OX3 7HT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr J Amantrading against the decision of Oxford City Council.
 - The application ref 21/02202/CPU, dated 6 August 2021, was refused by notice dated 30 September 2021.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is proposed outbuilding within the curtilage of the dwellinghouse (resubmission of 21/00809/CPU).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?
3. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.
4. In December 2020 a planning application¹ for the erection of single storey building to create 1x1-bed dwelling (Use Class C3) and the provision of private amenity space, cycle parking and bin storage was withdrawn. In May 2021 an application for an LDC for the erection of a single storey rear outbuilding² was refused. That outbuilding had an 'L' shaped footprint whereas, the plans submitted as part of the appeal before me show an outbuilding with a smaller footprint that does not have an 'L' shape.
5. At the site visit the appellant initially considered that the plans that had been submitted, and I had been supplied with, were incorrect as he considered he had appealed the LDC for the outbuilding with the 'L' shape footprint.

¹ Ref No: 20/02785/FUL

² Ref No: 21/00809/CPU

Nevertheless, the Council's representative at the site visit confirmed that the submitted plans were those associated with the decision that had been appealed. The appellant made a telephone call to his agent during the site visit. The agent confirmed that the plans I had been supplied with were those associated with the appeal he had submitted on behalf of the appellant. I have dealt with the appeal on this basis.

Main Issue

6. The main issue is whether the Council's decision to refuse the grant of an LDC was well-founded. This turns on whether the proposed outbuilding would benefit from the planning permission granted by Article 3(1) and Class E (Class E), Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), referred to as "permitted development". There is no dispute that the outbuilding would comply with the size and other limitations within paragraph E.1 of Class E. The single point of dispute is whether or not the proposed outbuilding would be "*required for a purpose incidental to the enjoyment of the dwellinghouse as such*".

Reasons

7. The appeal property comprises a semi-detached 2-storey dwelling that occupies a plot that has a relatively long rear garden. At the time of the site visit the garden areas to the rear of the appeal property and the adjacent dwelling were divided into separate sections by 1.8m high timber fences. The proposal involves erecting a single storey outbuilding near to the rear and a side boundary of the appeal property. The outbuilding would have a footprint of approximately 49m² and internally there would be three rooms accessed from bi-fold doors. The three rooms are shown to contain a gym, WC and store.
8. The Council have concerns that the withdrawn planning application for a dwelling on the site, that would have been of a similar size, design and position, indicates that the proposed outbuilding is not required for a purpose incidental to the enjoyment of the dwellinghouse. However, I should point out that these concerns are irrelevant, and I take no account of them in reaching my decision. The same could be said of any proposed Class E outbuilding if it were of a sufficient size and position so as to be potentially capable of providing independent accommodation. The LDC application, and this appeal, must be determined solely on the basis of what has actually been proposed. If in the future the outbuilding were to be used for non-incidental purposes as the Council fears, such that it would amount to a breach of planning control, the Council could exercise its enforcement powers.
9. An incidental use is one that has a normal functional relationship with a primary use. For a building to be '*required for a purpose incidental to the enjoyment of the dwellinghouse*', the appellant must show that it is '*reasonably required*'. Whether a building is '*reasonably required*' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwelling. Size and scale are factors to be taken into account, but they are not determinative.
10. Use as a home gym is within the wide range of day-to-day domestic leisure and recreational activities that occupiers of the dwelling might participate in. Whilst the outbuilding would contain a WC and sink, I am satisfied that these facilities would be ancillary to the gym use. Domestic storage would also normally be

regarded as being a subordinate activity connected with the running of the dwelling. Even though the dwelling has been extended previously it still appears to be of relatively modest size and it does not have access to a garage. I was not able to view inside the dwelling but the space available for the equipment associated with a gym or for storage is likely to be limited. Therefore, it would not be unreasonable to accommodate the above activities in an outbuilding.

11. Turning to whether the floor spaces for the uses are reasonably required, I observed that there are a large number of what appeared to be domestic items positioned within the garden area nearest to the dwelling. Moreover, there is a timber shed that is also in that part of the garden. However, the evidence before me makes no reference to this shed. The store within the proposal is stated to provide '*external storage space including garden equipment for the maintenance of the garden*'. Nonetheless, there is no explanation as to why the existing shed is not sufficient to contain the garden equipment. Furthermore, the layout of the proposed outbuilding would not appear to be practical as any items in the store area could only be accessed through the gym area. As such, the space allocated for the store appears excessive and impractical in the absence of any clear justification.
12. The layout of the equipment, shown on the submitted plans, in the gym and the size of that area does not strike me as being unrealistic. I note that the dwelling provides accommodation for four persons and that it would be feasible therefore that the gym could be in use by all four occupants.
13. The overall garden area around the buildings on the appeal property would be relatively generous. Nevertheless, the outbuilding would have a relatively large footprint, akin to that of the original footprint of the dwelling. Moreover, there is a lack of clarity as to why the existing garden area has been divided into separate sections with the timber fences. The outbuilding would be located in a separate section of the garden to that nearest to the dwelling if the fences were retained in place.
14. Given the size of the building and based on the evidence provided, I am not persuaded that the uses could not be provided in a more modestly sized building. Overall, the appellant has failed to demonstrate on the balance of probability that the proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse such that it would be permitted development within Class E.

Conclusion

15. 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 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.

D Boffin

INSPECTOR