

Appeal Decision

Site visit made on 15 June 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

APP/N5090/X/21/3283307

28 Crossway, London N12 0QT

- 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 by the London Borough of Barnet Council to grant a certificate of lawful use or development.
- The appeal was made by Mr S Ephgrave.
- The application, reference 21/2702/191, was registered on 18 May 2021. It was refused by a notice dated 20 July 2021.
- The development for which a certificate of lawful use or development was sought was for the retention of a rear garden outbuilding.
- The application was made under section 191(1)(b) of the Act for a certificate of lawfulness for the rear garden outbuilding.

Summary of decision: A certificate of lawfulness is not issued.

Appeal building

1. The appeal concerns a large flat roofed single storey building at the end of the rear garden of the 2 storey semi-detached house at No. 28 Crossway, N12 0QT. It is separated from the rear of the house by a short length of domestic garden. The building is just over 5.5m deep, 9m wide and has a maximum height of 2.50m. It covers a ground area of almost 50m². The building is internally divided into 3 rooms; a large gymnasium room with some exercise equipment, a home office with a desk and computer equipment and a small separate shower/w.c room.

Appellant's case

2. The Appellant, Mr Ephgrave, applied to the Council for a Certificate of Lawfulness for the retention of the outbuilding in the rear garden of No. 28 for the purposes of a gym, home office with a shower room and toilet. He said the use of the outbuilding as a gym and home office would be incidental to the main dwelling by virtue of its scale, connection and relationship with the main dwelling. That was evidence of subordination.

Council's case

3. The Council said the application was for retention of a building operation and its use. That amounted to development requiring planning permission. It was not permitted under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended,

(the Order), as, by virtue of its scale, the outbuilding was not considered to be incidental to the main dwellinghouse.

Inspector's considerations

4. The Town and Country Planning (General Permitted Development) Order 2015 as amended, (the Order), at Article 3 to the Order, Schedule 2 Permitted development rights, Part 1 - Development within the curtilage of a dwellinghouse at Class E.(a) permits the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such,
5. The interpretation of Class E at E.4. says that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes personal enjoyment of the occupants of the dwellinghouse. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. "Incidental" is defined in the Oxford Advanced Learner's Dictionary as something that happens in connection with something else, but is less important.
6. In the case of *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, 58 P&CR, it was said that an outbuilding must be 'required for some incidental purpose' to be permitted development under Class E, but its size is not relevant. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse "cannot rely on the unrestrained whim of he who dwells there". It was also held that the term incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. Reference is made to the need to consider whether, in the context of the planning unit, "the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse."
7. The appeal building is notably large when compared to the main house it purports to serve. The house covers a ground area of 54.41m² of the curtilage. The outbuilding covers almost 50m². I consider that this large outbuilding at No. 28 to not be subordinate to the main dwellinghouse. By virtue of its scale in relationship to the house, the gymnasium, in particular seemed unusually large for its reasonable needs and use by occupiers of the house. The substantial home office room also appeared to be unduly large and out of scale with the small house at No. 28. In my view, the outbuilding's use is unlikely to be incidental to the enjoyment of the main dwellinghouse. Its construction and use did not benefit from the concessions in Class E.(a) to the Order. It required planning permission.

Conclusion

8. I consider the Council's interpretation of the Order limitations as applied in this instance to have been correct. It was not shown that such a large gymnasium room and office was reasonably required in association with the small house at No. 28 Crossway. The erection of the rear garden outbuilding at No. 28 was development not permitted by the Order.

FORMAL DECISION

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for erection of the rear garden outbuilding at No. 28 Crossway, London N12 0QT was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(3) of the Act accordingly.

John Whalley

INSPECTOR