



Appeal Decision

Site visit made on 24 January 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/Z5060/X/21/3284654

188 Longbridge Road, Barking IG11 8SU

- 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 Ali Kholghi against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application ref 21/01222/CLUP, dated 14 June 2021, was refused by notice dated 26 July 2021.
 - 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 demolition of existing outbuilding and construction of new outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
3. The planning merits of the proposed development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law.
4. Correspondence was sent to the appellant requesting access be made available to the site. However, the appellant did not attend at the requested time, and I was unable to view the site. Nevertheless, this has not prevented me from being able to determine the appeal since all the information needed was included with the application and appeal documents, and a decision can be reached on the papers without causing prejudice to any party.

Main Issue

5. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

6. The appeal site is a semi-detached dwellinghouse. The application sought to demonstrate that the demolition of an existing outbuilding and the construction

- of a new outbuilding would be development permitted by Article 3(1) Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
7. Class E(a) of the GPDO permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to certain conditions and limitations.
 8. To benefit from the provisions of Schedule 2 Part 1 Class E of the GPDO, the proposed outbuilding must be required for a purpose incidental to the enjoyment of the dwellinghouse and must meet *all* [my emphasis] the limitations and conditions in Class E.
 9. In considering whether the purpose is incidental it is necessary to consider the purpose(s) for the building and the incidental quality in relation to the enjoyment of the dwellinghouse. It is also necessary to consider whether the building is genuinely and reasonably required to accommodate the uses(s) or activities and consequently achieve that purpose.
 10. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the dwellinghouse. In assessing whether the outbuilding is genuinely and reasonably required for incidental purposes it is necessary to apply objective reasonableness in consideration of all the relevant facts and circumstances.
 11. There is no indication of how the outbuilding would be used although the plans show a garage type door. Notwithstanding its size, which I consider to be fairly significant when compared to the dwellinghouse, in the absence of details about how the outbuilding would be used, I cannot conclude that it would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
 12. Accordingly, I find that the submitted evidence does not show, on the balance of probabilities, that the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. The proposed development would not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.
 13. Additionally, the Council stated that the overall height of the outbuilding would be 3.95m which the appellant did not dispute. Consequently, the proposed outbuilding would fail to meet the Class E.1.(e)(ii) requirement as it would exceed 2.5 metres in height and would be within 2 metres of the boundary of the curtilage of the dwellinghouse.
 14. Accordingly, since the appellant has failed to demonstrate that the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse, and as it does not comply with all the limitations and conditions in Class E, it would not be permitted by Class E of Part 1 of Schedule 2 of the GPDO.

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 *demolition of existing outbuilding and construction of new 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.

Felicity Thompson

INSPECTOR