



Appeal Decision

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/T5150/X/22/3301271

397 North Circular Road, Stonebridge, LONDON, NW10 0HS

- 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 Emil Ivanov against the decision of London Borough of Brent.
 - The application ref 21/4507, dated 9 February 2022, was refused by notice dated 4 April 2022.
 - 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 construction of a detached outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits are not relevant in deciding an LDC application or appeal. The onus of proof lies on the appellant and the relevant test of the evidence is 'the balance of probability'.
3. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. No 397 North Circular Road is a two storey semi-detached dwelling in an area of similar buildings. The appellant seeks an LDC in respect of his proposal to demolish an existing garage and construct a new single storey outbuilding in the rear plot.
6. Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 permits buildings and other structures incidental to a dwelling within its curtilage, subject to a number of conditions and limitations.
7. The new building would be set against the back boundary and would cover the full width of the plot. The footprint would be around 6.3m by 7m, with a footprint of approximately 44.1sqm, which would be less than 50% of the total area of the curtilage. The roof height would be about 2.5m.

8. Whilst the development would be consistent with the provisions of Class E in most respects, the Council's concern relates to its proposed use and size, which must reasonably be required for purposes incidental to the enjoyment of the main dwellinghouse.
9. A gym room and sauna are proposed within the building. These are uses which are not usually part of primary living accommodation and are capable of being incidental to the enjoyment of a house. However, the proposed internal floor plan shows that a shower room would be installed, including a toilet, a shower and a basin.
10. The 'Permitted development rights for householders - Technical Guidance' (September 2019, Ministry of Housing, Communities and Local Government) states that a purpose incidental to a house would not 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. Therefore, the inclusion of the shower room would result in a use that would not be incidental.
11. Furthermore, it needs to be demonstrated that the size of the proposed building would be commensurate with the needs of the main dwelling. As proposed, it appears from the floorplans that the new building would approximate to at least a third of the floorplan of the existing dwelling. It would also exceed the width of the main house by spanning the full width of the plot.
12. The Court in *Emin v SSE* [1989] JPL 909 confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. In view of the substantial dimensions of the new building, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling. It is also necessary to answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
13. As noted above, the onus of proof is on the appellant. However, I note that the appellant has made little comment on the proposed use and its relationship to the main dwelling.

Conclusion

14. Due to the inclusion of the shower, the proposal would offer primary living facilities which cannot be viewed as incidental. The appellant has also failed to justify the need for a building of the proposed size.
15. Therefore, for the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of construction of a detached 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.

Elaine Gray

INSPECTOR