



Appeal Decision

Site visit made on 18 June 2024

by A A Phillips BA(Hons), DipTP MTP MRTPI Assoc IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/N5090/X/23/3314263

The Ridge, 28 Hendon Wood Lane, Barnet Gate, Barnet, LONDON, NW7 4HR

- 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 Gerry Fitzgerald against the decision of the Council of the London Borough of Barnet.
 - The application ref 22/5373/192, dated 4 November 2022, was refused by notice dated 29 December 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 a rear outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

3. There is no dispute that the proposed outbuilding meets all the size requirements set out in Class E. The appellant contends that the size of the proposed outbuilding in comparison to the main dwellinghouse supports their argument that it would be subordinate and incidental to the dwellinghouse. I can see that the proposed footprint of the outbuilding would be 256 square metres whereas the footprint of the existing dwellinghouse is approximately 175 square metres, the dwellinghouse has three storeys whereas the proposed outbuilding would be single storey with a flat roof at a significantly lower level than the ground floor level of the dwelling. The dwellinghouse currently benefits from an outdoor swimming pool along with changing facilities, boiler room and other outbuildings which are all to be removed.
4. The proposed plans show a proposed swimming pool with plant/boiler room and adjacent relaxation area, a sauna, jacuzzi/hot tub, changing room with shower, WC, bar, gym equipment area, seating area with TV and a snooker table. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the

Emin case¹ it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this 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 in order to accommodate the proposed use or activity and thus achieve that purpose. In the Emin case it was held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes.

5. Nonetheless, the Wallington case² established that it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse. The case of Holding³ which concerned what might be regarded as a very large incidental building within the curtilage of a dwellinghouse, confirmed that this is indeed the correct approach. In determining that case the Inspector considered that it is reasonable to suppose that the purpose of the permission granted under Class E is to allow for accommodation for hobbies for which people need space in and around their home to be provided without the need for the formality of a planning application. Nevertheless, the test that should be applied must retain an element of objective reasonableness and should not be based on the unrestrained whim of the occupier. A hard objective test should not be imposed on cases to frustrate the reasonable aspirations of an owner as long as they are sensibly related to the enjoyment of the dwelling.
6. I find that these judgments and their detailed findings illustrate that in cases such as this the decision is very much a matter of fact and degree based on the specific circumstances of the case. Furthermore, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the Emin judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.
7. In this case the appellant presents that the space proposed is genuinely and reasonably required and is necessary to accommodate its intended use. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse.
8. In order for a building to be considered as permitted development all of it must be required for incidental purposes. A building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. I have noted that the plans show a large room with a seating area, bar and TV which appears to me to be intended for the occupants of the main dwellinghouse to relax, socialise and watch television. When not being used for

¹ Emin v SSE & Mid Sussex DC [1989] JPL 909

² Wallington v SSE & Montgomeryshire DC [1990] JPL 112; [1991] JPL 942

³ Holding v First Secretary of State [2003] EWHC 3138 (Admin)

entertaining, some of the space would be used for using exercise equipment. Nonetheless, the layout and use of the space is not something that would normally require accommodation separate to the living space contained within the main dwelling and the use would not materially differ from the use of the existing living room. As such part of the outbuilding merely replicates the use of the existing accommodation within the house and extends the primary residential use into the new outbuilding.

9. Therefore, whilst I am satisfied that some of the proposed activities such as swimming pool and associated plant, jacuzzi/hot tub, sauna, changing room with shower and WC, weights and exercise space and snooker table can be said to be incidental, I am not satisfied that as a whole the outbuilding would be required for incidental purposes. I do not take issue with the quality and standard of the accommodation proposed to be provided, nor should be appellant be penalised for wishing to have a high quality of accommodation for his and his family's use. However, in my judgement, it would be used for prolonged periods of time for activities such as entertaining guests, relaxing and watching television which are primary activities that replicate the use of the main house and would normally be expected to take place in the main house. Therefore, it would not fall within the scope of Class E as permitted development.

Conclusion

10. I conclude that the outbuilding would not be required in its entirety for incidental purposes. As such it would not be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.
11. For the reasons given above I conclude that the Council's to grant an LDC in respect of a rear 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).

A A Phillips

INSPECTOR