



Appeal Decision

Site visit made on 22 October 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 1 November 2024

Appeal Ref: APP/W4705/X/24/3341030

2 Snowdens Walk, BRADFORD, West Yorkshire, BD14 6JU

- 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 Uzmi Ali against the decision of City of Bradford Metropolitan District Council.
- The application ref BD14 6JU, dated 28 November 2023, was refused by notice dated 12 February 2024.
- 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 the construction of an outbuilding incidental to the main host dwelling.

Summary Decision: the appeal is dismissed.

Preliminary Matter

1. The Council did not send a representative to the pre-arranged site visit, and I proceeded in their absence.

Main Issue

2. The main issue between the parties, giving rise to the Council's reason for refusing the application for a certificate, is whether the proposed building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Reasons

3. Section 191(2) of the 1990 Act provides that operations are lawful at any time if no enforcement action may then be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Here, I am not informed that any enforcement notice is in force. The question arising is whether, if the proposed building were to be constructed, it would be susceptible to enforcement action.
4. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission for the classes of development described as permitted development in Schedule 2 to that Order. I am not informed that the permission granted by article 3 is disapplied for any reason: the existing use of the dwellinghouse appears to be lawful and I am not told of any relevant planning conditions that might affect any permission granted by article 3 of the Order.
5. Part 1 of Schedule 2 to the Order concerns development within the curtilage of a dwellinghouse. There is no dispute here that the proposed building would lie

within the curtilage of the existing dwellinghouse. Class E of that part specifically concerns the provision of outbuildings. A number of limitations as to the size or siting of such buildings apply, and there is no dispute that the proposed building would conform with those.

6. Thus the outcome of the appeal hinges on whether or not the building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such. The onus of proof is on the appellant to show, on the balance of probabilities, that what is proposed is reasonably required for such a purpose.
7. The application did not specifically identify any purpose for which the building would be required, other than to say that it would be incidental to the main host dwelling. Application plans were provided depicting the proposed building both internally and externally.
8. The existing house is described by both parties as having a footprint of 150m². It is a chalet bungalow although the floor plans supplied depict only the ground floor, containing two living rooms, two bedrooms, one bathroom and one kitchen/dining room, with an attached garage to the side.
9. The proposed outbuilding is said by the appellant to have a footprint of 130m² and by the Council to have a footprint of 152m². It would contain six rooms, all accessed from a central hallway and with what is depicted as a utility room having an additional external access. As well as the utility room, shown to contain two counter tops and a sink, rooms are depicted as an 'outdoor living room', a home office, a gym, a games room and a bathroom, depicted as containing both a bath and a shower as well as lavatory and hand basin. The 'outdoor living room' is separately described as an orangery.
10. The appellant describes these features as directly enhancing the enjoyment of the main dwelling for residents and their extended family who live at the property. It is pointed out that the existing dwelling has only one bathroom. The proposed bathroom is intended for use (described by the appellant as 'incidental') by the extended family as well as by those who use the home gym. The utility room is said to provide washing and drying facilities for the extended family.
11. In addressing size and separation concerns, the appellant contends that the proposed outbuilding provides dedicated spaces for activities that would otherwise take place within the main dwelling. This is a clear acceptance by the appellant that what is proposed in the building is 'overspill' primary residential accommodation. Much of what is proposed in the building is the provision of primary living accommodation; that is, for a residential use rather than for a purpose incidental to such a residential use. The Council refer to the Technical Guidance relating to permitted development rights for householders (September 2019, Ministry of Housing, Communities and Local Government) and its advice 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.
12. The parties dispute whether the 'utility room' is in reality a kitchen, with the appellant denying that cooking facilities are intended. However even if that is so, the building would contain other aspects that amount to primary living accommodation. The need for the 'orangery' is not explained save to say that

it is for 'relaxation'. That is a purpose normally found in the living quarters of a house, and I am not satisfied that it would be for any incidental purpose here. A bathroom is a type of room specifically identified by the Technical Guidance as primary living accommodation. Here, I am not satisfied that the bathroom would be exclusively used by those using the gym. It is to be separately accessed from the hallway, and the appellant describes it as being proposed for use by the extended family living at the property. I find that its provision would be for a primary residential use rather than for a purpose incidental to it.

13. Thus I cannot be satisfied that the building would satisfy the requirement of subordination referred to me by the appellant as arising from the case of *Emin v Secretary of State for the Environment* [1989] JPL 909, which is to say that its proposed uses would not be secondary and ancillary or incidental to the main residential use of the house but would partly amount to an extension of that primary use.
14. Therefore the construction of the building would not be permitted by the Order and, if built, it would be susceptible to enforcement action. Therefore it would not be lawful for the purposes of the 1990 Act.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the construction of an outbuilding at 2 Snowdens Walk, Bradford 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).

Formal Decision

16. The appeal is dismissed.

Laura Renaudon

INSPECTOR